



Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

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AGENDA

REGULAR MEETING OF THE CITY COUNCIL

March 8, 2005

7:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

CONSENT AGENDA

#2a - Approval of the Minutes for the February 16, 2005 and February 22, 2005 Council Meeting.

#2b - Consideration of a Resolution authorizing the City Manager to enter into an agreement with Infosol Inc. in the amount of \$5,324 annually to provide support and maintenance services for the Town's Court system.

#2c - Consideration of authorization for final payment of \$33,738.97 to Mels Electric, L.P., for furnishing and installing street and pedestrian light poles and luminaries on the Spectrum Drive North/South Extension Project.

#2d - Consideration of authorization to reject a single bid submitted by Jim Bowman Construction Co., L.P., in the amount of \$71,504.00, for the Sampling Manhole Construction Project.

#2e- Consideration of approval of a final plat for one tract of 1.2 acres, located on the north side of Excel Parkway, approximately 600 feet west of Addison Road, on application from Mr. Charles Raymond, represented by Michael Peeples Engineers.

#2f- Consideration of approval of a final plat for one lot of .7839 acres, located at 14523 Winnwood Road, in a Planned Development District (Ordinance 091-038), on application from Mr. Venugopal B. Menon, represented by Tom Knicker of NKR Engineering.

Item #R3 - Appointment of three members to the Addison Board of Zoning Adjustment (BZA).

Attachments:

1. Council Agenda Item Overview
2. List of BZA members

Administrative Comment:

BZA appointments do not belong to individual Councilmembers.

Item #R4 - Appointment of one member to the Planning and Zoning Commission.

Attachment:

1. Council Agenda Item Overview

Administrative Comment:

Appointment belongs to Councilmember Mellow.

Item #R5 - **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 430 (Addison Walk Shopping Center), on application from Mr. Nitin Parekh.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2005, voted to recommend approval of your request subject to the following conditions:

-the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Voting on Concept Plan

Voting Aye: Benjet, Bernstein, Doepfner, Jandura, Knott,
Voting Nay: None
Absent: Chafin
One Seat Vacant

Administrative Recommendation:

Administration recommends approval.

Item #R6 -

PUBLIC HEARING and consideration of an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 400 (Addison Walk Shopping Center), on application from Mr. Raaj Singh.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2005, voted to recommend approval of the request on application from Topz Dallas, subject to the following condition:

-the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Voting on Concept Plan

Voting Aye: Benjet, Bernstein, Doepfner, Jandura, Knott,
Voting Nay: None

Absent: Chafin
One seat vacant

Administrative Recommendation:

Administration recommends approval.

Item #R7-

Consideration of approval of award of bid and a Resolution authorizing the City Manager to enter into a contract in the amount of \$71,337.90 with Palm Springs Pool Service, for annual maintenance of display fountains and waterfall pumping systems.

Attachments:

1. Council Agenda Item Overview
2. Memo from Shanna Sims
3. Bid Sheet

Administrative Recommendation:

Administration recommends approval.

Item #R8 -

Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$15,000.00 with the Texas Chamber Orchestra for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

Attachments:

1. Council Agenda Item Overview
2. Performance Financials
3. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R9 -

Consideration of a Resolution authorizing the City Manager to enter into an agreement with MBIA MuniServices Company for hotel occupancy tax consulting services.

Attachments:

1. Council Agenda Item Overview
2. Consultant Services Agreement

Administrative Recommendation:

Administration recommends approval.

Item #R10 - Consideration of a Resolution authorizing the City Manager to enter into a Federal Aviation Administration Grant Agreement administered by the Texas Department of Transportation for the design and construction of an airport terminal administration building on Addison Airport.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R11 - Consideration of approval to award bid to BMW Motorcycles of North Dallas in the amount of \$56,994.00 for the purchase of (3) 2004 BMW Police Motorcycles.

Attachments:

1. Council Agenda Item Overview
2. Bid Sheet

Administration Recommendation:

Administration recommends approval.

Item #R12 - Consideration of a Resolution approving an estoppel letter agreement from Hibernia National Bank regarding certain financing provided by Hibernia National Bank to Eagle Land & Cattle Co., Tenant under a certain Ground Lease at Addison Airport in which the Town of Addison is the Landlord, the leased premises under the Ground Lease being certain property located

at the Airport and specifically described in the Ground Lease, and being generally located at 16151 Addison Road, (Taxiway Reference Building #L-17), Addison, TX 75001.

Attachments:

1. Council Agenda Item Overview
2. Memo from Lisa Pyles

Administration Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted 5:00 p.m.
March 3, 2005
Carmen Moran
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

February 16, 2005
7:30 p.m. Town Hall Council Chambers
Special Session
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Braun, Hirsch, Niemann, Turner
Absent: Ryland
One Seat Vacant.

Item #S1 – Consideration of and action regarding adoption of a Resolution filling a vacancy (by appointment) in the position of City Council Member of the Town of Addison until the May 7, 2005 general Town election, and take appropriate action.

Councilmember Turner moved to duly pass Resolution R05-020 and appoint Roger Mellow to fill the vacancy in the position of City Council Member of the Town of Addison. Councilmember Niemann seconded. Motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Turner
Voting Nay: None
Absent: Ryland
One Seat Vacant.

Item #S2 – Consideration of and action regarding adoption of a Resolution amending Resolution R05-013 (calling for a special election for May 7, 2005 to fill a vacancy in the office of Council Member of the City), by adding to the call of the special election the election of one (1) person to fill the unexpired term remaining in the office of Council Member, the unexpired term resulting from resignation of a second member of the City Council, so that the May 7, 2005 special election shall be for the purpose of electing one (1) person to fill the unexpired term remaining for each of two (2) offices of Council Member, the unexpired terms resulting from the resignation of two (2) members of the City Council.

Councilmember Niemann moved to duly pass Resolution R05-021. Councilmember Turner seconded. Motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Turner
Voting Nay: None
Absent: Ryland
One seat vacant.

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

February 22, 2005
7:30 p.m. Council Chambers
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Braun, Hirsch, Mellow, Niemann, Ryland, Turner

Item #R1 – Consideration of Old Business.

Item #R2 – Consent Agenda.

Items #2a, #2e, #2f and #2g were considered separately.

Item #2b – Consideration of a Resolution authorizing the City Manger to enter into a joint election agreement in an approximate amount of \$6,000.00 with Dallas County to conduct Addison's Elections on May 7, 2005. (Approved) (R05-022)

Item #2c – Consideration of approval of a 9-1-1 billing agreement with Integrated Communications Consultants, Inc., which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2d – Consideration of approval of a 9-1-1 billing agreement with Granite Telecommunications, LLC, which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

Item #2h – Consideration of a Resolution to award the bid for rental of fencing to National Construction Rentals in the amount of \$12,863.20 for the 2005 special event season with the option to renew for two additional years. (Approved) (R05-026)

Item #2i – Consideration of a Resolution to award the bid for temporary electrical service, lights and air conditioning to Entertainment Services in the amount of \$95,000 for the 2005 special event season with the option to renew for two additional years. (Approved) (R05-027)

Item #2j – Consideration of a Resolution to award the bid for stage, sound and lighting equipment to three bidders as follows for the 2005 special event season with the option to renew for two additional years:

- 1) Onstage Systems for Jazz Festival and Taste Addison in the amount of \$56,444.
- 2) Gemini Stage Lighting and Sound for Oktoberfest in the amount of \$18,888.
- 3) Executive Lighting and Sound Productions for July Jazz and Symphonic Saturdays in the amount of \$9,500. (Approved) (R05-028)

Councilmember Turner moved to duly approve the above listed items. Councilmember Braun seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner
Voted Nay: None
Absent: None

Item #2a – Approval of the Minutes for the February 7, 2005 and February 8, 2005 Council Meetings.

Councilmember Niemann moved to duly approve the Minutes of the February 7, 2005 Council Meeting subject to corrections. Councilmember Ryland seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner
Voted Nay: None
Absent: None

Item #2e – Consideration of a Resolution to award the bid for tent rentals to Mike Sandone Productions in the amount of \$102,399 for the 2005 special event season with the option to renew for two additional years.

Councilmember Niemann moved to duly pass Resolution No. R05-023 to award the bid for tent rentals to Mike Sandone Productions the amount of \$102,399 for the 2005 special event season with the option to renew for two additional years. Councilmember Turner seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner
Voted Nay: None
Absent: None

Item #2f – Consideration of a Resolution to award the bid for miscellaneous rentals to M&M Special Events in the amount of \$23,909.60 for the 2005 special event season with the option to renew for two additional years.

Councilmember Turner moved to duly pass Resolution No. R05-024 to award the bid for miscellaneous rentals to M&M Special Events in the amount of \$23,909.60 for the 2005 special event season with the option to renew for two additional years. Councilmember Braun seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner
Voted Nay: None
Absent: None

Item #2g – Consideration of a Resolution to award the bid for restroom and trash receptacles to Lone Star PPR, L.P. in the amount of \$27,337.20 for the 2005 special event season with the option to renew for two additional years.

Councilmember Niemann moved to duly pass Resolution No. R05-025 to award the bid for restroom and trash receptacles to Lone Star PPR, L.P. in the amount of \$27,337.20 for the

2005 special event season with the option to renew for two additional years. Councilmember Ryland seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner
Voted Nay: None
Absent: None

Item #R3 - Appointment of three members to the Addison Board of Zoning Adjustment (BZA).

This item was tabled.

Item #R4 - Presentation and consideration of the Addison 2030 Vision Project Report.

Councilmember Niemann moved to duly approved the Addison 2030 Vision Project Report. Councilmember Turner seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner
Voted Nay: None
Absent: None

Item #R5 - Presentation from a Dallas Area Rapid Transit representative regarding the DART 2030 Transit System Plan.

No action taken.

Councilmember Hirsch recused himself from Item #R6 and departed from the Council chambers.

Item #R6 - Consideration of a Resolution authorizing an amendment to a Lease between the Town of Addison, as landlord, and CNL APR Partners, LP and Amar Unlimited, Inc., as tenant concerning property located at 4460 Belt Line Road (Clay Pit Grill & Curry House).

Councilmember Turner moved to duly pass Resolution R-05-029 authorizing an amendment to a Lease between the Town of Addison, as landlord, and CNL APR Partners, LP and Amar Unlimited, Inc., as tenant concerning property located at 4460 Belt Line Road (Clay Pit Grill & Curry House), subject to review and final approval of the city attorney. Councilmember Niemann seconded. Motion carried.

Voted Aye: Wheeler, Braun, Mellow, Niemann, Ryland, Turner
Voted Nay: None
Absent: None
Abstaining: Hirsch

Councilmember Hirsch returned to the Council chambers.

Item #R7 - Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$15,000.00 with the Texas Chamber Orchestra for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

This item was tabled.

Item #R8 - Consideration of a Resolution approving an increase to the Taste Addison admission fee from \$5.00 to \$8.00 after 5 pm on Friday and Saturday evenings.

Councilmember Turner moved to duly pass Resolution No. R05-030 approving an increase to the Taste of Addison fee from \$5.00 to \$8.00 after 5pm on Friday and Saturday evenings. Councilmember Ryland seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner

Voted Nay: None

Absent: None

Item #R9 - Consideration of a Resolution by the Addison City Council demonstrating to the State Legislature its opposition regarding its efforts to make reforms in school finance and existing taxing systems that would negatively affect the Town's revenues and efforts in providing essential services, public safety, and economic development.

Councilmember Niemann moved to duly pass Resolution No. R05-031 demonstrating to the State Legislature the Addison City Council's opposition regarding its efforts to make reforms in school finance and existing taxing systems that would negatively affect the Town's revenues and efforts in providing essential services, public safety and economic development. Councilmember Ryland seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner

Voted Nay: None

Absent: None

Item #R10 - Consideration of a Resolution to authorize the City Manager to negotiate and enter into a contract with a legislative advocate for the purpose of providing monitoring and consultation services to the Town during the 79th Texas Legislative Session.

Councilmember Turner moved to duly pass Resolution No. R05-032 authorizing the City Manager to negotiate and enter into a contract with a legislative advocate for the purpose of providing monitoring and consultation services to the Town during the 79th Texas Legislative Session. Councilmember Hirsch seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner

Voted Nay: None

Absent: None

Item #R11 - Consideration to authorize the release of the 2004 Comprehensive Annual Financial Report (CAFR).

Councilmember Niemann moved to authorize the release of the 2004 Comprehensive Annual Financial Report (CAFR). Councilmember Hirsch seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Niemann, Ryland, Turner
Voted Nay: None
Absent: None

Councilmember Niemann recused himself from Item #R12 and departed the Council chambers.

Item #R12 - Consideration of an ordinance granting the right, privilege and franchise to TXU Electric Delivery Company, an electric transmission and distribution utility, and its successors and assigns, to use the public rights-of-way of the Town of Addison, Texas for the transmission and distribution of electric power subject to the conditions, restrictions, and limitations of this ordinance; prescribing the conditions, restrictions and limitations under which such franchise shall be exercised; providing compensation for such use; providing the term of franchise; providing a repealing clause; providing a severability clause; providing for the method of acceptance; and providing an effective date.

Councilmember Turner moves to duly pass Ordinance No. 005-010 granting the right, privilege and franchise to TXU Electric Delivery Company, an electric transmission and distribution utility, and its successors and assigns, to use the public rights-of-way of the Town of Addison, Texas for the transmission and distribution of electric power subject to the conditions, restrictions, and limitations of this ordinance; prescribing the conditions, restrictions and limitations under which such franchise; providing a repealing clause; providing a severability clause; providing for the method of acceptance; and providing an effective date. Councilmember Braun seconded. Motion carried.

Voted Aye: Wheeler, Braun, Hirsch, Mellow, Ryland, Turner
Voted Nay: None
Absent: None
Abstaining: Niemann

Councilmember Niemann returned to the Council chambers.

Item #R13 - Presentation of the Finance Department Quarterly Review.

No action taken.

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

Council Agenda Item: #2b

SUMMARY:

A proposed agreement between the Town of Addison and Infosol Inc. A copy of the contract, June 2003, and September 2004 letters from CSI.

FINANCIAL IMPACT:

Budgeted Amount: **\$5,324**

Cost: **N/A**

No additional financial impact to the Town will be realized, as the annual maintenance cost (\$5,324) stays the same.

BACKGROUND:

The Town's existing court system has been in operation for almost 7 years. It's a very robust application and we are very happy with the functionality and the quality of service we have received and continue receiving from the provider, Court Specialists, Inc (CSI). However, in June 2003 we received a document from CSI stating that CSI has implemented a new browser-based case management software application that will be replacing the existing system and they encourage the existing users to migrate to the new platform called eNACT. They also stated that they will not be supporting the existing system beyond June 2006 and furthermore, since September 1, 2003, support for the CSI has been in a strictly maintenance mode with only critical defects being patched. We tested the new platform, which is geared more toward handling the County Court rather than the Municipal Court, and we were not pleased with the functionality. As a result, we started evaluating our options by gathering information to replace the existing system. In September 2004 we received a letter from CSI stating that CSI entered into an agreement with Infosol Inc. to provide maintenance and support services for CSI application beyond the June 2006 deadline. The purpose of this agreement was to provide CSI customers with the choice of either migrating to Court Specialists' new case management software, eNACT, or to remain on the CSI product. Bob Greer, Business Development Manager, with Infosol Inc. was the original developer of the CSI system.

RECOMMENDATION:

Staff recommends that the Council authorize the City Manager to enter into an agreement with Infosol Inc. in the amount of 5,324 annually to provide support and maintenance services for the Town's Court system.

SOFTWARE MAINTENANCE AGREEMENT

BETWEEN: **Town of Addison**
5350 Beltline Road
Addison, Texas 75254

(hereinafter referred to as "LICENSEE")

and

INFOSOL, INC.
6750 West Loop South, suite 500
Bellaire, Texas 77401

(hereinafter referred to as "LICENSOR")

TERM: **1-01-2005 to 12-31-2005**

WHEREAS, LICENSOR has licensed to LICENSEE the software as specified in Schedule A and the LICENSEE wishes to have LICENSOR perform software maintenance services on the licensed software pursuant to the following terms:

I. DEFINITIONS

- A. Software. The term "Software" shall mean the computer programs in object code and source code and documentation including any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to such computer programs and documentation for those products listed in Schedule A of this agreement.
- B. System. The term "System" shall mean all Software, maintenance, equipment, system or database management software, and other services provided by LICENSOR under the terms and conditions of the Software License Agreement.
- C. Normal Business Hours. Normal Business Hours for LICENSOR for purposes of this agreement are:
Monday through Friday
8:00 am - 5:00 p.m. CST
Excluding LICENSOR's holidays:
New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Friday after Thanksgiving
Christmas Eve
Christmas Day
(If a scheduled holiday falls on a weekend, it will be taken on either the previous Friday or subsequent Monday.)
- D. Critical incident. A problem or error has occurred that has caused the software or a major portion of the software to be inoperable.

- E. Priority incident. A problem or error has occurred that does not prevent use of the product, but affects LICENSEE's ability to conduct business. A workaround may exist, but is cumbersome or time consuming.
- F. Non-priority incident. A minor problem which may be cosmetic or may affect usability, but for which there is an easy workaround.

II. SCOPE OF WORK

- A. This agreement covers:
 - 1. Reasonable amounts of consultation by telephone to LICENSEE'S designated contact for questions concerning operation of software. LICENSEE'S designated contact must have attended LICENSOR'S training classes for the supported product(s).
 - 2. Fixes for any errors or inconsistencies in the software, or failures of the software to perform in accordance with the License Agreement or software manuals notified to LICENSOR by LICENSEE during the term of this agreement. LICENSEE shall assist LICENSOR in identifying the circumstances in which such errors or inconsistencies were discovered and in providing documentary evidence of the same.
 - 3. New releases to existing software and related documentation. One major release annually and other releases as required due to changes in State and Federal requirements and/or software error correction.
- B. Items not covered under this agreement will be billed per LICENSOR's standard support charges. LICENSOR will notify LICENSEE when a request for assistance is not covered under this agreement and will be billable and will receive approval from LICENSEE before the services are performed. This agreement does not cover:
 - 1. Programming for customized development or modifications requested by LICENSEE.
 - 2. Operational problems with products not covered by this agreement.
 - 3. Errors caused by customer misuse of the software.
 - 4. Recovery assistance necessary due to negligence of LICENSEE or Acts of God.
 - 5. Installation expense for system enhancements.
 - 6. Continuing education and training.
 - 7. Non-critical support calls initiated outside of normal business hours.
 - 8. Installation, maintenance, and training of hardware, operating systems, databases, and third party software.
- C. Customization
 - 1. LICENSEE shall submit a written request for any custom work.
 - 2. LICENSOR will review the custom work requests and present LICENSEE with a written definition of customizing to be performed, a time schedule and a price quote.
 - 3. LICENSOR will begin work only after receiving written confirmation by LICENSEE.

III. PROCEDURES

- A. Telecommunications. LICENSEE shall install and have operational at the time of software installation and during the term of this agreement a PPP connection, or VPN, or a 56k modem and dial-up telephone line along with the required third-party software for LICENSOR'S use in diagnosing reported incidents. Long distance charges will be reviewed annually and if they exceed 15% of the annual support fee for that year an adjustment may be made to next year's annual support fee.
- B. Diagnosis and response. LICENSOR will provide problem diagnosis for incidents reported by LICENSEE and will supply program fixes or solutions in a timely manner consistent with the urgency of the problem. LICENSEE will send written documentation of the problem including its priority to LICENSOR.
1. Critical Incidents. LICENSOR will respond immediately to diagnose the problem. LICENSOR will work diligently with LICENSEE to correct the problem as soon as possible.
 2. Priority Incidents. Licensor will respond within one (2) hour of notification by LICENSEE to diagnose the problem. Within twenty-four (48) hours, LICENSOR will either provide a solution to the problem or mutually agree with LICENSEE upon a schedule for implementation of a solution.
 3. Non-Priority Incidents. LICENSOR will respond within twenty-four (24) hours. LICENSOR will provide a solution to the problem in the next release of the software.
 4. LICENSOR and LICENSEE may agree that problem investigation would be better conducted at LICENSEE'S location. In the event that LICENSOR'S personnel travel to LICENSEE'S location, LICENSEE will pay LICENSOR for travel and subsistence expenses. If LICENSOR, in its reasonable judgment, determines that a suspected error condition was attributable to a cause other than an error in the Software, then Licensee will pay for LICENSOR'S efforts on a time and materials basis.
- C. Escalation Process. If a problem is not addressed in a timely manner, LICENSEE may escalate the support process by contacting the Customer Support Manager, then the Vice President of Professional Services, and then the President.

IV. TERM AND TERMINATION

- a. Term. The term of this agreement shall commence on 1-01-2005 and shall continue until 12-31-2005. Subsequent terms will be for a period of one year, after which either party on thirty (30) days prior written notice may terminate this agreement. LICENSOR retains the right to increase annual maintenance fees at the beginning of each subsequent term. Should LICENSOR elect to increase annual maintenance fees, LICENSOR will give notice of such increase to LICENSEE thirty (30) days prior to the commencement of the subsequent term.
- b. Renewal. This agreement may be renewed for successive, one-year terms upon the terms and conditions stated herein. At each subsequent renewal, the annual fee shall not increase more than 15% greater than the then current maintenance fee charged by LICENSOR to LICENSEE.
- c. Termination. Either party may terminate this agreement in the event of default by the other party. In the event of termination by LICENSOR or default by LICENSOR, fees paid by LICENSEE for any period after the termination date shall be refunded by LICENSOR. In the event of termination by LICENSEE or default by LICENSEE, any maintenance fees up to the termination date shall become due and payable and fees previously paid shall not be refundable.

V. PAYMENT

LICENSEE shall pay to LICENSOR the annual maintenance fee designated for each product listed in Schedule A. Subsequent annual fees will be payable in advance. If the annual support fee is not paid within 60 days of the invoice date, this Software Maintenance Agreement shall be void. A reinstatement penalty of 50% of the invoice amount shall be assessed in addition to the regular fee and must be paid in advance in order to reinstate the agreement.

VI. TITLE

Any changes, additions or enhancements in the form of new or partial programs or documentation as may be provided under this agreement shall remain the property of LICENSOR, are proprietary to LICENSOR and title thereto remains with LICENSOR.

VII. GENERAL PROVISIONS

- A. Assignment. Neither LICENSEE nor LICENSOR shall assign or otherwise transfer any right of interest in this Agreement, in the Software, or any components of the Software, and expressly including, without limitation, the source code, in whole or in part, to anyone, including any parent, subsidiaries, affiliated entities or third parties, or as part of the sale of any portion of its business, or pursuant to any merger, consolidation or reorganization, including by operation of law, without the other party's prior written consent.
- B. Entire Agreement. This document and its incorporated documents embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties.
- C. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- D. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Dallas County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Dallas County, Texas.
- E. Headings. The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.
- F. Notices. All notices given hereunder will be sent registered, certified, or overnight delivery, addressed to the other party at the address shown in the first paragraph of this Agreement or other such address as either party may specify in writing.
- G. Insurance. LICENSOR shall at LICENSOR's own expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by LICENSOR, its agents, representatives, employees or subcontractors.
- H. Force Majeure. Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, or riots. The parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of a delay in the performance of this Agreement.

VIII. UPGRADES

LICENSEE will be given proper and timely written notice addressing upgrade issues. The LICENSEE will have 30 days to reply to such notice. After 30 days, LICENSOR will allow the LICENSEE 120

more days to install the upgraded software. The LICENSEE is required to stay current on LICENSOR'S latest release of the Software. If LICENSEE chooses not to upgrade, then LICENSOR will have no other choice but to discontinue maintenance on LICENSEE's software. In order for the LICENSOR to provide the "best" and "least expensive" support to all our LICENSEES, then LICENSOR requires that all LICENSEES stay current with our software.

IN WITNESS WHEREOF, the parties have caused this Agreement, which shall insure to the benefit of and be binding upon the successors of the respective parties, for the term specified and any subsequent renewals.

INFOSOL, INC.

TOWN OF ADDISON

By: _____
Signature

By: _____
Signature

Robert Garza
Name

Name

President
Title

Title

Date: _____

Date: _____

SCHEDULE A - SOFTWARE AND FEES

Product

Annual Maintenance Fee

**Year One Annual Support for
COURTHOUSE
ADDISON MUNICIPAL COURT**

5,324.00

SCHEDULE B - STANDARD SUPPORT CHARGES

1. Support from INFOSOL Office:

A.	Custom Programming Requests	\$175.00 per hour
B.	Database Performance Evaluation	\$400.00
C.	Database Administration Services	\$175.00 per hour
D.	Hardware Support Services	\$175.00 per hour
E.	Other Services Not Covered by Maintenance Agreement	\$175.00 per hour

2. On-Site Support:

A.	On-Site Customer will be billed:	\$200.00 per hour
B.	Required parts and Material	Actual Expense
C.	All travel related expenses as described:	
	• Travel by automobile from the time a Infosol technician leaves Infosol office until he/she returns	Per Standard IRS Rate
	• Travel time	\$50.00 per hour
	• Required air fare and car rental paid by Customer	Actual Expense
	• If an overnight stay is required, lodging and meals are paid by Customer	Actual Expense

- 3. Communications (i.e. long distance and modem) charges pertaining to support** **Actual Expense**
- 4. Continuing Education and Training at LICENSEE'S facility Plus travel related expenses** **\$1,000.00 per day**
- 5. Invoice payment terms are NET 30 DAYS.**

*All the above pricing is subject to change with 30 days prior notice.

SCHEDULE C - DEFINITIONS AND EXAMPLES OF COVERED AND NON-COVERED SUPPORT TERMS

Covered Items:

1. What is "Reasonable amounts of consultation by telephone:"
 - A. Reasonable amounts of consultation is defined as the practical amount of time necessary to assist a fully staffed court and application trained person in resolving operational questions concerning the software. Such questions may consist of:
 - (1) How do I run a particular function within the program and how often?
 - (2) Where do I find a particular function within the program?
 - (3) What data elements are required in a specific area of the program?
 - B. Telephone guidance for untrained employees will not be provided under this agreement.
2. Infosol Operational Enhancements which are covered:
 - A. An operational enhancement is a change to a current feature of the software making the feature easier to use. It could have expanded capabilities, improved audit trails, stronger user control, or all of the above. An example includes:
 - (1) Covered enhancement would include any enhancement request, which is approved by the Infosol enhancement committee as a valuable addition to the software package for all or a majority of the clients.
3. State Required Enhancements:
 - A. The State mandated a new report, a change to an old report, or the capture and maintenance of new data elements. An example includes:
 - (1) State requiring the collection of administrative and education cost for law enforcement officers.
4. New Features or modules purchased by LICENSEE from LICENSOR which were not original part of the base system and presently incorporated in this agreement, may incur an additional maintenance fee but will be included under this maintenance agreement once purchased.

Not Covered Items:

1. Long Distance Telephone Charges and Long Distance Modem Charges for items not covered by this maintenance agreement will be charged at actual expense.
2. Customized Programming:
 - A. Custom programming is performed at the request of the Customer for changes to a current program or the development of a new or additional program. Examples include:
 - (1) The software provides a standard data entry screen. The customer requests a modification to this screen.
 - (2) Customer requests defendant's driver's license number be included on the cash list.
3. This Product under Another Hardware and/or Software Platform:
 - A. Infosol Software and third party products must be compatible with the operating system and hardware for which the software is designed. Examples include:
 - (1) Customer operates a single user DOS version of Infosol software, WordPerfect and Informix.
 - (2) Customer desires to upgrade to a multi-user environment. This upgrade requires the purchase of the multi-user version of the operating system, Infosol Software, WordPerfect and Informix.
4. Interfacing To Peripherals Such As Personal Computers, Terminals, Printers, Modems, etc. :
 - A. Interfacing to peripherals requires both hardware and software communication. The peripheral must be physically connected to the computer. The operating system must be configured to support the peripheral.

5. Operational Problems With Products Not Covered By “A Support Agreement”:
- A. The Infosol Software Maintenance Contract is solely for the support and maintenance of Infosol software and DOES NOT include the support or maintenance of other (customer owned) software or hardware products.
6. Errors Related to User Misapplication:
- A. Erroneous erasure of data or programs and/or misapplication of data. An example is:
 - (1) Erasing data in error or a wrong date on a large number of records requires Infosol to write a routine to recover or correct the information.
7. Recovery Assistance:
- A. Restoring the system to a useable state. An example is:
 - (1) The hard drive on the computer is damaged during relocation and/or an Act of God, requiring Infosol to restore programs and/or data to a repaired/replaced hard drive.
8. Continuing Education and Training:
- A. Education and training of operational and/or state enhancements, the purchase of additional modules, the purchase of a new release or product capability. Examples include:
 - (1) Enhancements to the original version purchase.
 - (2) Addition of a module not purchased at the time of sale.
 - (3) New employees or additional users.
9. Installation of Enhancements:
- A. Installations of enhancements whether operational or state required are provided by electronic media. These software changes must be loaded to the Customer’s computer before operation of the enhanced program by the user. In loading the software changes, alterations to the database that stores user information may be required. If so, the Customer’s current database must be converted to the altered format before operation of the enhanced program. The complexity of alterations and/or enhancements may require additional training.

ADDENDUM “A”

TEST ENVIRONMENT:

Infosol will provide installation of software into a test environment prior to installation into production for a test period to be determined by agreement between *licensee* and *licensor*.

Standards for the test environment will duplicate production environment standards and will be used for testing and validation of the software prior to installation onto the production environment.



Court Specialists, Inc.
P.O. Box 1523
Friendswood, Texas 77546-1523

1-800-572-6878
Office (281) 482-8898
Fax (281) 482-3398

September 14, 2004

To Our CourtHouse Customers:

In June of 2004 Court Specialists entered into an agreement with Infosol to provide support and maintenance services for our CourtHouse case management software. The purpose of this agreement was to provide CourtHouse customers with the choice of either migrating to Court Specialists' new case management software, eNACT, or to remain on the CourtHouse product.

Infosol has also been granted *exclusive* sales and marketing rights for the CourtHouse system. In this respect, Infosol will be enhancing the product to allow them to expand the customer base. This approach will allow the CourtHouse system to continue beyond the June 30, 2006 deadline Court Specialists has set for terminating support services.

Infosol intends to provide maintenance and support services for the CourtHouse system beyond June 30, 2006. Those customers who cannot, or do not, intend to migrate to the eNACT system will be able to contract directly with Infosol for longer term maintenance and support services. This will allow those customers to extend the life of their CourtHouse system beyond the June 30, 2006 deadline.

Sincerely,

Charles E. Riddle
Executive Vice President
Court Specialists, Inc.



Lorri Coody, Vice President
General Operations

Court Specialists, Inc.
P.O. Box 1523
Friendswood, TX 77549-1523

1 800-572-6878
Office: 281-482-8898
Fax: 281-482-3398

June 12, 2003

To Our CourtHouse Customers:

It is CSI's vision to be recognized in the judicial marketplace as the premium provider of products and services that facilitate fully integrated justice systems. To be successful, we must attract and retain satisfied customers by providing quality products and services at competitive prices.

In keeping aligned with our vision, CSI has implemented our eNACT™ browser-based case management software application. eNACT™ offers state of the art functionality to courts of all jurisdictions and is capable of running on several platforms, increasing versatility.

Since eNACT™ provides the foundation upon which a fully integrated justice system revolves, this product is CSI's future. As such, all of our efforts are focused on consolidating our product line into the eNACT™ product.

With this in mind and considering eNACT's capability and the demands for similar functionality from our CourtHouse customers, CSI is in the process of migrating the unique capabilities of our CourtHouse product to work within the eNACT™ suite. This process will afford our existing CourtHouse users a migration path to the new version of our municipal court case management software. We will complete the migration of CourtHouse functions by the third quarter of 2004.

What this means to you as a CourtHouse customer is that CSI will make one more major release to the existing CourtHouse application. This release will include the 2003 legislative updates as well as some additional features and will be loaded at all client sites no later than September 1, 2003.

After September 1, 2003, support for the CourtHouse product will be in a strictly maintenance mode with only critical defects being patched. This line of support will continue thru June 30, 2005. As maintenance contracts come due during the one-year period prior to June 30, 2005, clients will be invoiced for a prorated amount that will insure support up to and ending on June 30, 2005. Client's electing to migrate under this plan must be under an active, paid-up maintenance agreement.

It is CSI's goal to migrate CourtHouse users to the new version by June 30, 2005. In accomplishing this goal, CSI has put together an equitable migration plan that includes no charge for the eNACT™ municipal court case management software itself, but does require some preparation costs on behalf of the City. For this reason, in order for your City to begin planning, this letter outlines the high-level elements involved in such a migration.

First, since the environment in which eNACT™ operates is different from that of CourtHouse, your City must provide the required hardware and third party software as outlined herein.

The eNACT™ application employs a multi-tier architecture that allows implementation on various combinations of servers depending on the size of the jurisdiction, number of users, case volumes, and other factors. For the most part, however, the number of "active" users is a good touchstone for determining server needs.

Additionally, eNACT™ makes use of various third party utilities and operating environments such as ColdFusion MX Professional, Crystal Enterprise Standard, Crystal Reports, JRun, and SQL Server 2000.

While each implementation should assess the many variables that affect system load and performance to determine the best combination and configuration of servers, the chart below suggests three different implementation options taking into account the number of active users.

	active users	server	CPU's	RAM	CF/MX	JRun	Sql Svr 2k	Oracle	CE
I	0 - 25	Application	2	2GB	for JRun	v4	Std	-	v9 Std
II	25 - 50	Application	2	2GB	for JRun	v4	-	-	v9 Std
		Database	2	2GB	-	-	Std	-	-
III	50 - 100	Application	2	2GB	for JRun	v4	-	-	v9 Std
		Database	2	2GB	-	-	Std	-	-
		Public	1	1GB	-	v4	-	-	-

Second, once your City has established the proper environment, CSI will begin the implementation plan. The services outlined in the plan will be billable at the following rates:

- \$20,000 for a 1 to 5 user court,
- \$30,000 for a 6 to 10 user court,
- \$40,000 for courts with 11 or more users.

Deviations from the standard plan may increase costs.

Services include:

- Preparation Activities, including Verification Workshops;
- Application Configuration, including data conversion and system verification; and
- Deployment, including system testing and training.

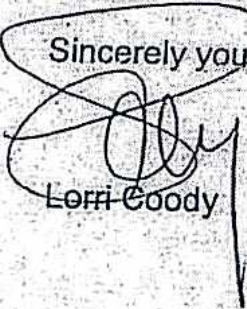
Finally, maintenance costs for the new version will be the greater of \$700 per user per year or \$7,000 per year and will go into effect upon completion of the upgrade.

Page 3
June 12, 2003

CSI realizes that you will have questions regarding the migration. Therefore, we will conduct a question and answer session in conjunction with the CSI User's Group Annual Conference to be held in Rosenberg, Texas on August 14 and 15. You should receive more details about the conference through the User Group's conference invitation.

We have worked with our Courthouse clients for many years and truly appreciate the relationships that we have built. It is important to us that we continue these relationships. Please do not hesitate to contact us regarding your concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lorri Coody", is written over the typed name. The signature is stylized with a large, looping initial "L".

Lorri Coody

Council Agenda Item: #2c

SUMMARY:

This item is for final payment, in the amount of \$33,738.97, and acceptance of improvements performed by Mels Electric, L.P., for furnishing and installing street and pedestrian light poles and luminaries on the Spectrum Drive North/South Extension Project.

FINANCIAL IMPACT:

Total Budgeted Amount:	\$3,100,000
Final Light Poles & Luminaries cost:	\$ 319,700.00
Original Street Construction Cost:	\$2,550,736.40
Source of Funds:	\$2,300,000 from Bond Sale, \$300,000 from undesignated surplus bond funds, \$550,000 from Addison Rd. DART Lap funds.

BACKGROUND:

The Spectrum Drive North/South Extension Project was established as part of the current Capital Improvements Program. The portion of Spectrum Drive, from Morris Avenue to Airport Parkway, is a continuation of the second phase of the Addison Circle project. Spectrum Drive was also extended south, from the DART railroad right-of-way to Arapaho Road. All roadway improvements were completed, including the construction of concrete foundations for the installation of street and pedestrian light poles. During the construction period, the Town worked with a lighting consultant to develop a new design for the lights on this project. As a result, a change order with the street contractor was approved for the deduction of costs for installing standard “shoe-box” type poles. Subsequently, a contract was awarded to Mels Electric, L.P., in the amount of \$319,700 for installation of new street and pedestrian light poles and luminaries. It was determined that this design change in lighting would provide an enhanced aesthetic look and optimum lighting coverage within the entire street right-of-way of Spectrum Drive.

The contractor has submitted his Affidavit of Bills Paid, Consent of Surety Company to Final Payment, and One year Maintenance Bond.

RECOMMENDATION:

Staff recommends that Council authorize final payment of \$33,738.97, and accept the furnishing and installation of street and pedestrian light poles and luminaries on the Spectrum Drive North/South Extension Project.

MELS ELECTRIC, L.P.

1810 S. Akard Street
Dallas, Texas 75215
(214) 565-1074

RETAINAGE

To:

TOWN OF ADDISON
PO BOX 9010
ADDISON, TX 75001-9010

Job Name

SPECTRUM LIGHTS
BID 04-24
TOWN OF ADDISON, TX

INVOICE DATE

02-22-2005

CUSTOMER NO

ADD01

ESTIMATE NO

RETAINAGE

INVOICE NO

94996

Retainage 02-072

33,738.97

**PLEASE REFERENCE THIS INVOICE NUMBER ON YOUR
REMITTANCE!!!!**

Amount Billed

Total Tax

Retainage Held

TOTAL DUE**\$33,738.97**

Council Agenda Item: #2d

SUMMARY:

This item is for the rejection of a single bid submitted by Jim Bowman Construction Co., L.P., for the Sampling Manhole Construction Project.

FINANCIAL IMPACT:

Budgeted Amount:	\$45,000
Engineering Estimate:	\$33,000
Construction Bid Amount:	\$71,504.00
Source of Funds:	Funds are available from the FY 2004-2005 Water and Sewer Fund.

BACKGROUND:

In coordination with Dallas Water Utilities (DWU), the Town of Addison prepared engineering plans and specifications for the construction of three sanitary sewer manholes that will be constructed over existing DWU mains along the east side of the Dallas North Tollway. Each manhole would be located within a DWU easement and be equipped with devices that would allow for more effective sampling and testing of the wastewater flow from Addison into the DWU system. This operation will ultimately allow for more accurate readings regarding wastewater quality and directly affect future rate structures for treatment of the Town's effluent.

The Town held a pre-bid meeting on February 1, 2005. Only one contractor attended the meeting to discuss the scope of work. As a result, staff sent out an addendum to the project, whereby, another pre-bid meeting was scheduled for February 15, 2005 and the bid opening date was moved to February 22, 2005. No contractors attended the second pre-bid meeting despite continued advertisement and forwarding the announcement of the meeting to several potential contractors in this area. Jim Bowman Construction Co., L.P. submitted the only bid, in the amount of \$71,504.00. This contract provided for A + B bidding for purposes of award. However, the engineering estimate was \$33,000. Consequently, staff feels that the single bid is significantly higher than the estimate and should be rejected. The construction of the three sampling manholes is still necessary. As a result, staff is prepared to include this construction work with a substantially larger water main improvements project that will be bid this summer.

RECOMMENDATION:

Staff recommends rejection of the single bid submitted by Jim Bowman Construction Co., L.P., in the amount of \$71,504.00, for the Sampling Manhole Construction Project.

**Sampling Manhole Construction
Bid NO 05-06**

**DUE: February 22, 2005
2:00 PM**

BIDDER	SIGNED	Bid Bond	Addendum 1	Addendum 2	Standard Bid (A)	Total Calendar Days (B)	Total Bid (A+B)
Jim Bowman Construction Co. LP	Y	Y	Y	Y	\$71,504.00	\$6,250.00	\$77,754.00

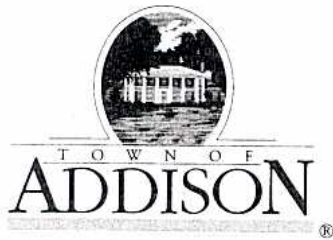
Shanna N. Sims

Shanna N. Sims, Budget and Procurement Manager

Corey Gayden

Witness

The map displays a residential neighborhood with several streets and numerous lots. The streets shown are Sojourn Dr, Airborne Dr, Excel Pkwy, Sunbelt Dr, Westgrove Dr, Addison Rd, and Highway 290. A proposed street, Amelia Earhart Dr, is indicated by a dashed line. The lots are marked with various permit numbers in cloud-like shapes, including PD 85-089, PD 85-037, PD 93-057, PD 99-020, PD 00-016, PD 85-093, PD 99-025, PD 95-006, PD 95-054, PD 83-043, PD 85-056, PD 83-017, PD 097-01, PD-TH 707, and PD 829. Other markers include A 167, C-1 688, LR 269, and A 318. A black rectangular area is highlighted on Excel Pkwy, and a dashed line indicates a proposed street, Amelia Earhart Dr.



Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

50 YEARS OF FUN!

(972) 450-7000

FAX (972) 450-7043

February 17, 2005

STAFF REPORT

RE: FINAL PLAT/4300 Excel Addition

LOCATION: 1.2 acres on the north side of Excel Parkway, approximately 600 feet West of Addison Road

REQUEST: Final plat approval

APPLICANT: Mr. Charles Raymond

DISCUSSION:

Background. This tract is currently a raw land site. In September of 2004, Mr. Raymond received development plan approval in an existing Planned Development district for a one-story office building for his construction company. At this time, Mr. Raymond is proposing to build the building he received approval for, but then sell it to another user.

Proposed Plat. The Public Works department has reviewed the proposed final plat, and the following items have been noted:

- Indicate building line on plat
- show a proposed drainage easement that addresses the flow of storm water angled across the front of the property. Engineering plans and specifications must be submitted and approved by the Town for the construction of drainage facilities that are based on the 100-year design frequency and also includes on-site storm water detention.
- Show a proposed utility easement adjacent to the east or west property line in order to provide for franchise utility line installation.
- Civil design plans must be approved by the Town for all improvements, including grading, drainage, water, sewer, and paving within the right-of-way of Excel Pkwy.

In addition, Excel Parkway is reflected as "Excell" in some spots. All spellings should be corrected.

RECOMMENDATION:

Staff recommends approval subject to the conditions listed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C Moran". The signature is stylized with a large "C" and a bold, slanted "MORAN".

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2005, voted to recommend approval of the proposed plat, on application from Mr. Charles Raymond, subject to the following conditions:

- Indicate building line on plat
- show a proposed drainage easement that addresses the flow of storm water angled across the front of the property. Engineering plans and specifications must be submitted and approved by the Town for the construction of drainage facilities that are based on the 100-year design frequency and also includes on-site storm water detention.
- Show a proposed utility easement adjacent to the east or west property line in order to provide for franchise utility line installation.
- Civil design plans must be approved by the Town for all improvements, including grading, drainage, water, sewer, and paving within the right-of-way of Excel Pkwy.
- Correct all inaccurate spellings of "Excel"

Voting Aye: Benjet, Bernstein, Doepfner, Jandura, Knott,

Voting Nay: None

Absent: Chafin

One Seat vacant

Carmen Moran

From: Steve Chutchian
Sent: Tuesday, February 08, 2005 9:09 AM
To: Carmen Moran
Subject: Planning and Zoning Agenda Comments

The following comments are submitted for items included in the February 21, 2005 Planning and Zoning Commission meeting:

FINAL PLAT/4300 Excel Addition.

- Indicate building line on plat
- show a proposed drainage easement that addresses the flow of storm water angled across the front of the property. Engineering plans and specifications must be submitted and approved by the Town for the construction of drainage facilities that are based on the 100-year design frequency and also includes on-site storm water detention.
- Show a proposed utility easement adjacent to the east or west property line in order to provide for franchise utility line installation.
- Civil design plans must be approved by the Town for all improvements, including grading, drainage, water, sewer, and paving within the right-of-way of Excel Pkwy.

FINAL PLAT/Lot 4A & 4B, Block C, Addison Airport Industrial District.

- Include a proposed utility and access easement along the east property line of Lot 4A. Lot 4B must have access to a public street (Wiley Post Road). Separate water service and metering is required for Lot 4B.
- Show designation of Richard Byrd Drive adjacent to the south right-of-way line of Lot 4B, and on Addison Airport property.

Case 1484-SUP/Red Brick Pizza.

No Comments

Case 1485-SUP/Topz Dallas

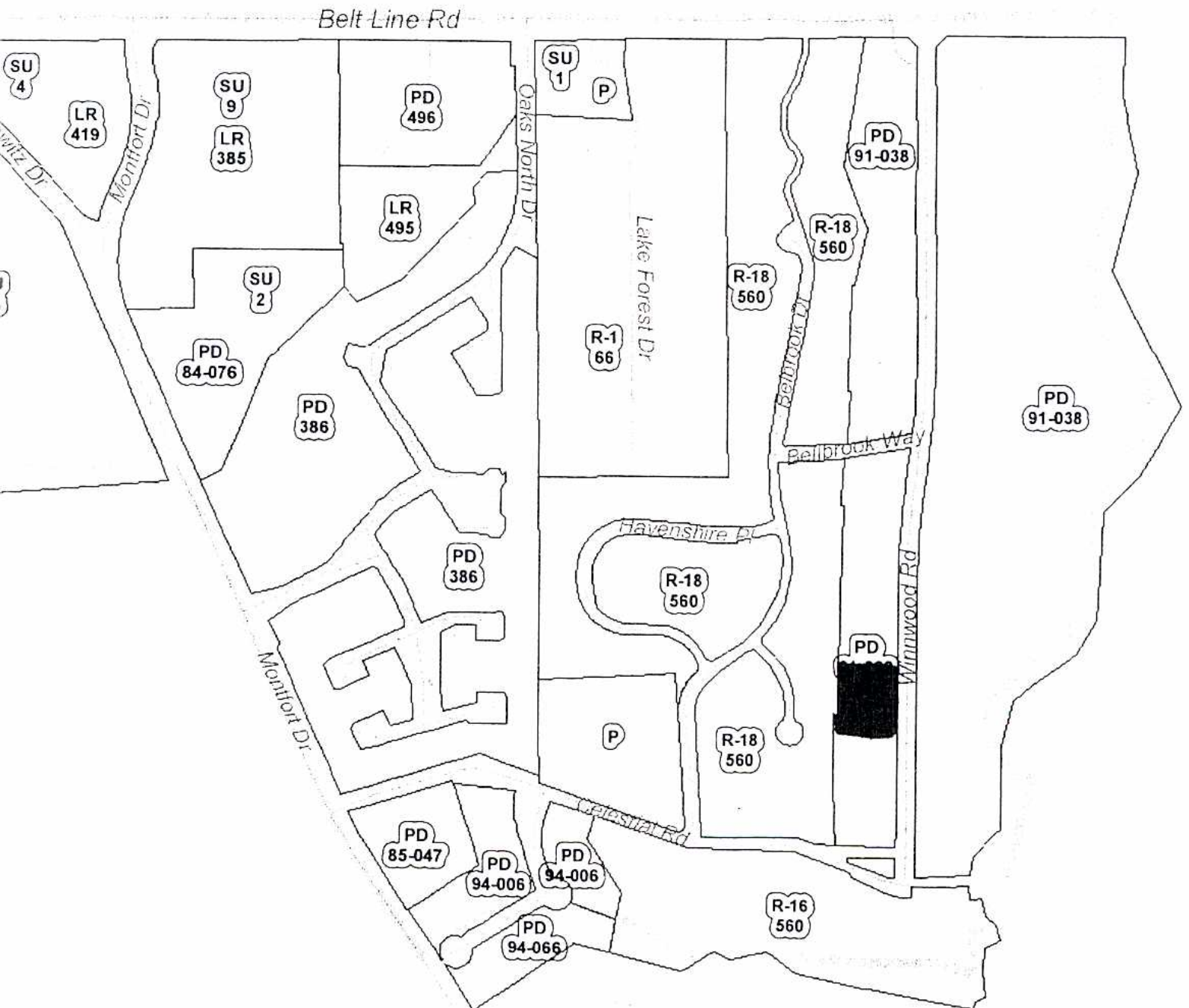
No Comments

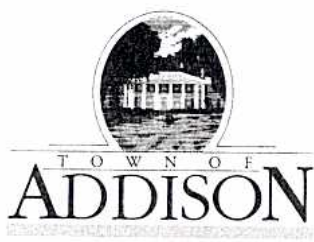
Should you have any questions, please let me know.

Steven Z. Chutchian, P.E.
Assistant City Engineer

FINAL PLAT/Menon Addition

FINAL PLAT/Menon Addition. Requesting approval of a final plat for one lot of .7839 acres, located at 14523 Winnwood Road, in a Planned Development District (Ordinance 091-038), on application from Mr. Venugopal B. Menon, represented by Tom Knicker of NKR Engineering.





Addison 50!

50 YEARS OF FUN!

Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

(972) 450-7000

FAX (972) 450-7043

January 20, 2005

STAFF REPORT

RE:

FINAL PLAT/Menon Addition

LOCATION:

One lot of .7839 acres in a
Planned Development District
With single-family residential
Uses (091-038), located at
14523 Winwood Road

REQUEST:

Approval of a final plat

APPLICANT:

Mr. Venugopal B. Menon,
Represented by Mr. Tom Knicker
Of NKR Engineering

DISCUSSION:

Background. This site is located in a Planned Development district that covers the east and west sides of Winnwood Road. This site has never been developed and is one of the last lots left on Winnwood Road. Mr. Menon plans to build his home on the site.

Public Works. The Public Works Department has reviewed the plat and has the following comments:

-Civil design plans and specifications must be approved by the Town of Addison for all public site improvements, including storm drainage and utility lines.

-A drainage and grading plan is necessary to determine the type and location of drainage facilities, including location of drainage easements on the site.

These are advisory comments, not revisions that need to be made to the plat document itself.

RECOMMENDATION:

Staff recommends approval of the proposed plat for two lots subject to the following conditions:

- Civil design plans and specifications must be approved by the Town of Addison for all public site improvements, including storm drainage and utility lines.

- A drainage and grading plan is necessary to determine the type and location of drainage facilities, including location of drainage easements on the site.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. MORAN'.

Carmen Moran

Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on January 27, 2005, voted to recommend approval of the final plat on application from Menon Addition, subject to the following conditions:

- Civil design plans and specifications must be approved by the Town of Addison for all public site improvements, including storm drainage and utility lines.

- A drainage and grading plan is necessary to determine the type and location of drainage facilities, including location of drainage easements on the site.

Voting Aye: Bernstein, Chafin, Doepfner, Knott, Mellow

Voting Nay: none

Absent: Benjet, Jandura

Carmen Moran

From: Steve Chutchian
Sent: Wednesday, January 12, 2005 11:51 AM
To: Carmen Moran
Subject: FW: Planning & Zoning Agenda Comments

-----Original Message-----

From: Steve Chutchian
Sent: Tuesday, January 11, 2005 3:11 PM
To: Carmen Moran
Subject: Planning & Zoning Agenda Comments

The following comments are submitted for items included in an upcoming Planning & Zoning agenda:

Menon Addition, Lot 3, Block 8171

- Civil design plans and specifications must be approved by the Town of Addison for all public site improvements, including storm drainage and utility lines.
- A drainage and grading plan is necessary to determine type and location of drainage facilities, including location of drainage easements on the site.

Addison Jet Center, Lots 1-3, Block 1

- Indicate location of Frank Luke on the re-plat, including bearing and distance to nearest site boundary line.
- Proposed adjacent property lines do not match legend and must be correctly designated.
- Proposed civil construction plans must be submitted and approved by the Town as part of final plat approval.

Addison Airport

No Comments

Should you have any questions, please let me know.

Steven Z. Chutchian, P.E.
Assistance City Engineer

NKR ENGINEERING GROUP, INC.

CIVIL ENGINEERING DESIGN & CONSULTING SERVICES

February 8, 2005
8804

Ms Carmen Moran
Director of Development Services
Town of Addison
5300 Belt Line Road
Addison, Texas 75001

Transmitted Via Fax: 972-450-7043

Re: FINAL PLAT/ Menon Addition
14523 Winnwood Road
Addison, Texas 75001

Dear Ms. Moran

On behalf of our client, Mr. Venu Menon, we request that City Council consideration and action pertaining to the referenced Final Plat be postponed until the March 8, 2005 council meeting.

Design development for the project may affect the final alignment of the water easement currently shown on the plat document. It is our intention to work through these design issues and get concurrence from the Engineering Department prior to the March City Council meeting.

Please call at your convenience if you have any questions or require additional information.

Sincerely,

NKR ENGINEERING GROUP, INC.



Thomas J. Knicker, P.E.

cc: Venu Menon

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4004 Belt Line Road, Suite 210
Addison, Texas 75001
Tele: 972-818-6305
Fax: 972-818-6306
E-Mail: tknicker@nkreng.com

Council Agenda Item: #R3

SUMMARY:

Staff requests the Council appoint three members to the Addison Board of Zoning Adjustment.

BACKGROUND:

The Board of Zoning Adjustment consists of five members with four alternates. The following members terms expired on January 14, 2005:

Corie Ewing	Second term
W. David Griggs	Second term
Richard Lane	First term
Beverly Roberts	First term

Typically, this Board meets less than once a year, and in an effort to get members who could attend, the staff added one alternate member. From the pool of six members, the staff would try to get five members who could attend. However, during the summer, we could not get even four members to attend. Therefore, we exercised the provision in the ordinance to appoint four alternates, but should have appointed only three. We now have more members than we need, so although four members have expired terms, we only need to appoint three members.

A list of the current Board membership is attached. Unlike the Planning and Zoning Commission appointments, these appointments do not belong to individual Councilmembers. Term limits for BZA members were instituted in 2000. Any terms that a member may have served prior to 2000 are not reflected in the listing above.

RECOMMENDATION:

Staff recommends the Council appoint three members to the Board of Zoning Adjustment.

BOARD OF ZONING ADJUSTMENT

MEMBERS

Corie Ewing

4000 Bobbin Lane
Addison, TX 75001-4901
(H) 972-454-3284
Term Expires: 1-14-2005 – 2nd Term

W. David Griggs

14605 Dartmouth Court
Addison, TX 75001-4439
(W) 214-979-9378
(H) 972-406-9667
Term Expires: 1-14-2005 – 2nd Term

Richard Lane

14516 Winnwood Road
Dallas, TX 75254-7639
(W) 972-490-8517
(H) 214-543-4600
Term Expires: 1-14-2005 – 1st Term

Charles “Chick” Martin

14810 Lochinvar Drive
Dallas, TX 75254-7528
(H) 972-733-3177
Term Expires: 8-12-2005 – 1st Term

Maggie McQuown

14600 Brookwood Lane
Addison, TX 75001-0234
(W) 972-247-0234
Term Expires: 3-23-2006 1st Term

Beverly Roberts

4040 Morman Lane
Addison, TX 75001-3103
(W) 972-851-2181
(H) 972-392-9460
Term Expires: 1-14-2005 1st Term

ALTERNATES

Virgil Burkhardt

4007 Winter Park Lane
Addison, TX 75001-4904
(H) 972-490-8517
Term Expires: 9-28-2006 1st Term

Joel Davis

4067 Beltway Drive #148
Addison, T 75001-4920
(W) 214-743-5427
(H) 972-490-0440
Term Expires: 9-28-2006 – 1st Term

William Green

3845 Canot Lane
Addison, TX 75001-7904
(H) 972-454-3284
Term Expires: 9-28-2006 – 1st Term

Alan Wood

14609 Lexus Avenue
Addison, TX 75001-3132
(W) 214-269-3114
Term Expires: 9-28-2006 – 1st Term

Council Agenda Item: #R4

SUMMARY:

Staff requests the Council appoint a member to the Planning and Zoning Commission.

BACKGROUND:

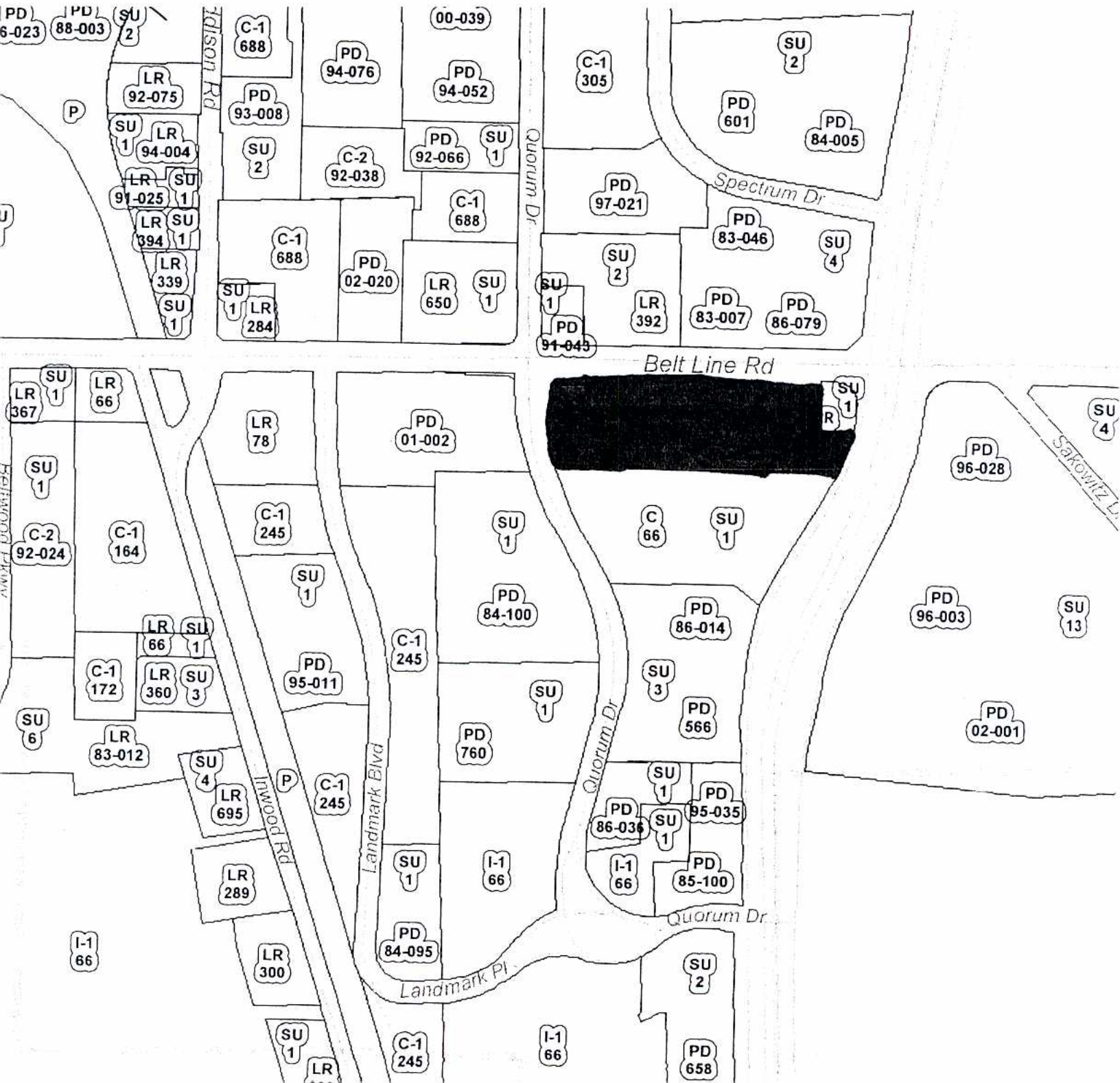
Councilmember Roger Mellow was recently appointed to the Council to replace Joe Chow, who resigned to run for Mayor. Mr. Mellow had been on the Planning and Zoning Commission, and had been appointed to the Commission by Mr. Chow. Therefore, the appointment to fill the vacancy left by Commissioner Mellow belongs to Councilmember Mellow.

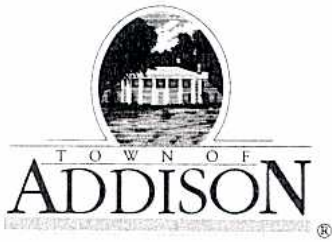
RECOMMENDATION:

Staff recommends the Council appoint a member to the Planning and Zoning Commission.

1484-SUP

Case 1484-SUP/Red Brick Pizza. Requesting approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 430 (Addison Walk Shopping Center), on application from Mr. Nitin Parekh.





Addison 50!

50 YEARS OF FUN!

Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

(972) 450-7000

FAX (972) 450-7043

February 17, 2005

STAFF REPORT

RE: Case 1484-SUP/Red Brick Pizza

LOCATION: 5000 Belt Line Road, Suite 430
Addison Walk Shopping Center

REQUEST: Approval of a Special Use Permit
for a restaurant, and a Special Use
Permit for the sale of alcoholic
beverages for on-premises
consumption only

APPLICANT: Red Brick Pizza, represented by
Mr. Nitin Parekh

DISCUSSION:

Background. This lease space is located in the Addison Walk shopping center. The center was recently renovated and re-named. The Commission and Council have already approved Nothing But Noodles, Buffalo Wild Wings, Freebird's World Burrito, and Baker Bros. Deli as new restaurants in this center. Nothing But Noodles was the first new restaurant to open, and it has recently closed. This restaurant and the next case, Case 1485-SUP/Topz Dallas, will occupy adjoining spaces in the former location of CD World. CD World has moved west in the center and is now located between Freebird's World Burrito and Baker Bros. Deli.

Proposed Plan. The floor plan shows a 1,728 square-foot restaurant with seating for 36. The plan does not show a separate bar area, but the applicant intends to serve beer and wine. Food is ordered at a deli-style counter and then picked up by the customers. The drinks are self-service. The kitchen will take up 551 square feet (32%) and the dining area and restrooms will take up the remaining 1,177 square feet (68%) of the floor area.

The plans do not indicate any patio dining, but the applicant has indicated he would like to have patio dining. This space, as well as the adjacent space, has some sidewalk area in front of it for a patio. However, the sidewalk has to be kept clear and handicapped accessibility has to be provided. Lynn Chandler, the Building Official, has measured the spaces and determined that this space can have a patio area of 154 square feet and still meet all necessary codes for sidewalk width and accessibility. Staff recommends that a 154 square-foot patio be added to the request for a total of 1,882 square feet.

Parking. Restaurant uses in this center have a parking ratio of one space per 180 square feet. This restaurant will require 10 spaces, including the spaces required for the patio. The site will provide sufficient parking. However, the shopping center owner should be aware that there is a limit to the amount of restaurant space that can be added to the center.

Landscaping. The landscaping in this center was recently renovated. There are no landscaping conditions for this request.

Food Service Code. This restaurant will require a grease trap, and the applicant should be advised that the restaurant will be subject to all regulations contained in the Addison Food Service Ordinance.

Signage. The applicant will not make any changes to the existing brick façade for the space. The plans do not show any signs, but the applicant should be aware that signs cannot be approved through this process. All signs for the restaurant must comply with the requirements of the Addison Sign Ordinance. The applicant should also be aware that the Town has a policy against allowing any exterior signs, which contain the words "bar", "tavern" or any terms, or graphic depictions, which relate to alcoholic beverages on exterior signs for the restaurant.

RECOMMENDATION:

Staff recommends approval of the Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

- the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CMORAN". The signature is stylized with a large "C" and "M" and the name "ORAN" in a more standard script.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2005, voted to recommend approval of your request subject to the following conditions:

-the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Voting Aye: Benjet, Bernstein, Doepfner, Jandura, Knott,

Voting Nay: None

Absent: Chafin

One Seat Vacant



50 YEARS OF FUN!

Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000
FAX (972) 450-7043

February 17, 2005

STAFF REPORT

RE: Case 1485-SUP/Topz Dallas

LOCATION: 5000 Belt Line Road, Suite 400
Addison Walk Shopping Center

REQUEST: Approval of a Special Use Permit
for a restaurant, and a Special Use
Permit for the sale of alcoholic
beverages for on-premises
consumption only

APPLICANT: Topz Dallas, represented by Mr. Raaj
Singh

DISCUSSION:

Background. This lease space is located in the Addison Walk shopping center. The center was recently renovated and re-named. The Commission and Council have already approved Nothing But Noodles, Buffalo Wild Wings, Freebird's World Burrito, and Baker Bros. Deli as new restaurants in this center. Nothing But Noodles was the first new restaurant to open, and it has recently closed. This restaurant and the preceding case, Case 1484-SUP/Red Brick Pizza, will occupy adjoining spaces in the former location of CD World. CD World has moved west in the center and is now located between Freebird's World Burrito and Baker Bros. Deli. Topz Dallas will offer gourmet hamburgers.

Proposed Plan. The floor plan shows a 1,440 square-foot restaurant with seating for 22 customers. The plan does not show a separate bar area, but the applicant intends to serve beer and wine. Food is ordered at a deli-style counter and then picked up by the customers. The drinks are self-service. The kitchen will take up 480 square feet (33%) and the dining area and restrooms will take up the remaining 960 square feet (67%) of the floor area.

The plans do not indicate any patio dining, but the applicant has indicated he would like to have patio dining. This space, as well as the adjacent space, has some sidewalk area in front of it for a patio. However, the sidewalk has to be kept clear and handicapped accessibility has to be provided. Lynn Chandler, the Building Official, has measured the spaces and determined that this space can have a patio area of 140 square feet and still meet all necessary codes for sidewalk width and accessibility. Staff recommends that a 140 square-foot patio be added to the request for a total of 1,580 square feet.

Parking. Restaurant uses in this center have a parking ratio of one space per 180 square feet. This restaurant will require 9 spaces, including the spaces required for the patio. The site will provide sufficient parking. However, the shopping center owner should be aware that there is a limit to the amount of restaurant space that can be added to the center.

Landscaping. The landscaping in this center was recently renovated. There are no landscaping conditions for this request.

Food Service Code. This restaurant will require a grease trap, and the applicant should be advised that the restaurant will be subject to all regulations contained in the Addison Food Service Ordinance.

Signage. The applicant will not make any changes to the existing brick façade for the space. The plans do not show any signs, but the applicant should be aware that signs cannot be approved through this process. All signs for the restaurant must comply with the requirements of the Addison Sign Ordinance. The applicant should also be aware that the Town has a policy against allowing any exterior signs, which contain the words "bar", "tavern" or any terms, or graphic depictions, which relate to alcoholic beverages on exterior signs for the restaurant.

RECOMMENDATION:

Staff recommends approval of the Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

- the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. MORAN". The signature is stylized with a large, looped "C" and the name "MORAN" in a more straightforward, slightly slanted font.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

During the process, the applicant was able to pick up some additional square footage for the restaurant from the landlord. The space will actually be 1,600 square feet as opposed to 1,440. With the addition of the 140 square-foot patio, the restaurant will be 1,740 square feet and the parking requirement is now 10 spaces. There is sufficient parking in the center for the restaurant.

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2005, voted to recommend approval of the request on application from Topz Dallas, subject to the following condition:

-the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Voting Aye: Benjet, Bernstein, Doepfner, Jandura, Knott,

Voting Nay: None

Absent: Chafin

One seat vacant

Council Agenda Item: #R7

SUMMARY:

Staff recommends that the Council award a bid totaling \$71,337.90 to Palm Springs Pool Service for annual maintenance of display fountains and waterfall pumping systems. This contract may be extended for two (2) twelve-month periods if the contractor is performing the maintenance in a satisfactory manner.

FINANCIAL IMPACT:

Budgeted Amount: **Total Budget - \$75,000**

Cost: **\$71,337.90**

It will cost \$56,485.40 to maintain the Addison Circle Park display and interactive fountains, which will be funded from the Hotel Fund special events budget. All maintenance relating to the Addison Circle Park is funded from the Hotel Fund, as this project is meant to complement the special events and Conference and Theatre Centre activities. The remaining \$14,852.50 will be funded out of the parks operations budget.

The previous fountain maintenance contractor, DCC, Inc., completed their annual contract for approximately \$30,000; however, they significantly under estimated the amount of time required to keep the Addison Circle Park fountain clean. They bid the work with no prior experience since the fountain system was new. Staff's experience with this contract necessitated increasing the scope of services required for the Addison Circle Park fountain, subsequently increasing the cost do the work in a satisfactory manner.

Palm Springs bid shows a 40 percent mark up on parts, which is twice that of the second low bidder. It should be pointed out that part replacements are rare, and staff intends to supply most of the parts when necessary.

BACKGROUND:

The scope of work under this contract consists of weekly cleaning of fountains to maintain proper water chemistry and maintenance of pumping/filtering systems to keep display fountains and waterfalls functioning smoothly.

The Addison Circle Park fountain requires daily cleaning. The fountains maintained under this contract are as follows:

Addison Circle Park – Interactive Fountain and Display Fountain;
Quorum Park – Two Display Fountains;
Bosque Park – One Display Fountain;
Winnwood Park/Gazebo – One Waterfall and One Display Fountain;
Town Hall and Finance Building – One Waterfall and One Display Fountain;
Midway Meadows – One Display Fountain;
Les Lacs Lake – Two Waterfalls and One Display Fountain.

Page 2 – Fountain Maintenance Bid Award

The Council rejected bids for this work in January 2005 because the low bidder, Palm Springs, submitted a bid with alternative insurance to Workers Compensation insurance that was specified in the bid document. The second low bid was much greater than the low bid, thus staff recommended rejecting both bids. Council formally rejected these bids at the January 25, 2005 Council meeting. The attached memo from the Finance Department further describes the bidding and insurance background for this work. Although the revised insurance requirements did not result in submission of more competitive bids, the two bids received were within \$4,100 of one another without a wide variance in price as with prior bids.

The low bid that was rejected in January 2005 totaled \$59,989. The new bid increased \$11,364 due to a scope of work change that staff added to the specifications to address recent OSHA confined space safety standards for underground vaults. In addition, the Addison Circle Park fountain designer, Georgia Fountains, submitted information to the town recommending that no one should be working in the Addison Circle Park vault alone without another person above ground ready to respond should an emergency occur involving the person inside the vault.

According to the town's Texas Municipal League Risk Management representative, Texas cities are not regulated under OSHA guidelines; however, private contractors working under a contract for a city are required to follow OSHA regulations. The Texas Workers Compensation Commission and the Department of State Health Services are the regulatory entities for occupational hazards relating to cities.

RECOMMENDATION:

Palm Springs Pool Service has maintained the fountain systems for the Parks Department on a temporary basis during the rebidding process. They have successfully completed fountain maintenance in the past on all of the towns fountain systems. In addition, they are maintaining fountain systems for private developments. Based on our experience with them, we recommend approval.

Attachments: Finance Department Memorandum
Bid Tabulation

Memo

To: Slade Strickland, Director of Parks and Recreation
From: Shanna Sims, Budget and Procurement Manager
Copy: Randy Moravec, Finance Director
Bryan Langley, Assistant Finance Director
Date: January 13, 2005
Re: Bid 05-05 Fountain Maintenance

I wanted to provide some additional information regarding Bid 05-05 Fountain Maintenance and staff's recommendation to reject this current bid and rebid this service in February.

The City Council awarded a bid for fountain maintenance on September 14, 2004 to DCC, Inc. Unfortunately, DCC, Inc. could not honor the contract due to insurance issues. The City Council rescinded this bid award at the October 12, 2004 City Council meeting.

Staff released a bid for fountain maintenance in November 2004. Parks and Finance staff both made significant efforts to contact potential bidders and encourage them to submit bids. Unfortunately, two bidders decided not to submit bids at the last minute and there were only two bids submitted. The low bidder, Palm Springs Pool Services, submitted a bid that did not have Workers Compensation insurance as specified in the bid document. The other bid was much greater than low bid, thus staff is recommending rejecting both bids.

On January 5, 2005, Finance staff met with the Town of Addison's insurance consultant, Bob Lazarus with RWL & Associates. Mr. Lazarus reviewed our current insurance requirements and recommended that for non-construction projects, Workers Compensation insurance not be required. Vendors for non-construction projects will continue to be required to carry commercial general liability and commercial liability insurance. Finance staff will begin incorporating these revised insurance requirements into bid documents for non-construction projects beginning in mid-January.

Parks staff has indicated a desire to release a bid for fountain maintenance in late January with the revised insurance requirements. I feel that we will have a better chance at receiving more quality bids with this revised bid document due to not having to require vendors to carry Workers Compensation insurance. In addition, Parks and Finance staff are willing to proactively contact and inform possible bidders of these revised insurance requirements.

I hope this information is helpful. If I can provide any additional information to you concerning this bid, please let me know.

Fountain Maintenance
Bid NO 05-11

DUE: February 11, 2005
2:00 PM

BIDDER	SIGNED	Bid Bond	Addendum 1	Bid Amount	Labor for Misc.Repairs	Labor for Add.Site Visits	% for Parts - Repairs
Palm Springs Pool Service	Y	Y	Y	\$71,337.90	\$55/hour	\$35/hour	40%
K.C. Fountains & Scapes	Y	Y	Y	\$75,420.00	\$65/hour	\$47/hour	20%

Shanna N. Sims

Shanna N. Sims, Budget and Procurement Manager

Corey Gayden

Witness

Council Agenda Item: #R8

SUMMARY:

To consider approval of the contract for service between the Town of Addison and the Texas Chamber Orchestra in the amount of \$15,000 as authorized in the FY 2004/05 Hotel Fund budget.

FINANCIAL IMPACT:

Budgeted Amount: \$30,000

Cost: \$15,000

BACKGROUND:

During the FY 2004/05 budget process, the Texas Chamber Orchestra (TCO) made an initial request in the amount of \$75,000. However, the City Council formally approved the funding amount for \$30,000. However, during the budget process deliberations, it was discovered that TCO's Executive Director had resigned. It was also discovered that TCO had not completed its scheduled performances at Anne Frank Elementary and Janie Elementary and was canceling their outdoor performances at Oktoberfest due to a visa problem with the visiting German conductor. As a result of their organizational problems, the Orchestra has cancelled all of their scheduled season performances at the Theatre Centre except for the May 7, 2005 (which is still tentatively scheduled) performance.

Since then, the Orchestra has hired a new Executive Director that is experienced in non-profit fundraising and organizational management. Consequently, staff has been in discussions with them in order to salvage their season and determine the appropriate performances and venues to make up for the missed performances in 2004.

In order to receive the funding amount of \$15,000, the Texas Chamber Orchestra shall agree and provide the following services in FY 2004/05:

- Reschedule one (1) free children's concert at Janie Stark Elementary School on March 16, 2005 and one (1) free concert at Anne Frank Elementary School on March 23, 2005.
- One (1) concert at the Addison Theatre Centre on May 7, 2005.
- Provide a full-page promotional advertisement for the Town in the season program.
- Provide detailed quarterly financial statements and program results to the City.
- Receive payment from the Town only after the school and May performances \$5,000 and \$10,000 respectively.

RECOMMENDATION:

It is recommended that the City Council approve a resolution authorizing the City Manager to enter into a contract with the Texas Chamber Orchestra for an amount not to exceed \$15,000. This contract shall be subject to final review and approval by the City Attorney.

ADDISON THEATER CENTER
TYPICAL PERFORMANCE FINANCIALS **

REVENUES

Capacity: 210 seats

15 Complimentary	\$ 0
20 Student	200
40 Seniors	880
70 Season Ticket Holders	1,750
65 Performance Patrons	<u>1,820</u>
 TOTAL POTENTIAL REVENUE	 \$ 4,650

TYPICAL CLASSICAL PROGRAM

Conductor/Guest Artist/Soloist	\$ 5,000
Musicians (including rehearsals and performance)	10,000
Instrument Rental & Cartage	1,000
Librarian Expenses (including music rental)	1,000
Rehearsal Hall	200
Personnel Manager (contracting, hiring, subbing)	400
Stage Manager/Lighting	850
Marketing/Advertising	2,000
Printing (Tickets/Programs)	1,000
Concert Recording	250
Miscellaneous Direct Expenses	<u>500</u>
 TOTAL EXPENSES	 \$ 22,200

EXPENSES EXCEEDING Revenues **\$ 17,550**

* * Does not include any General/Administrative overhead

STATE OF TEXAS

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

§

This Contract for Services is made and entered into as of the 1st day of October, 2004 by and between the Town of Addison, Texas (the "City"), and the Texas Chamber Orchestra (the "Orchestra").

WITNESSETH:

WHEREAS, the Orchestra is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing concerts of great music and educational opportunities for adults and children within the cities of Addison, Carrollton, Coppell and Farmers Branch; and

WHEREAS, the Orchestra's productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

WHEREAS, it is the City's desire to encourage and promote the arts, including, without limitation, music; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, music, and desires to encourage and promote the arts (including music) through the execution of this Contract for Services.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Texas Chamber Orchestra do hereby contract, covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2004 through the 30th day of September, 2005, except as otherwise provided for herein.

II. SERVICES

The Orchestra shall provide the following services:

- (a) Re-schedule and conduct within the spring semester 2005, a free children's concert at Janie Stark Elementary School on March 16, 2005, and at Anne Frank Elementary School on March 23, 2005; upon the concerts being re-scheduled, and upon their completion shall promptly give notice to the City of their completion.

- (b) Provide one (1) season concert at the Addison Theatre Centre on May 7, 2005. The Orchestra shall contact the Addison Theatre Centre for the purposes of coordinating the concerts.
- (c) Provide a full-page promotional advertisement for the Town in the season program.
- (d) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Orchestra with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Orchestra as described herein, the City shall pay the Orchestra the sum of fifteen thousand and No/100 Dollars (\$15,000.00). One-third of such sum (Five Thousand and No/100 Dollars (\$5,000.00)) shall be paid upon the completion to the City's satisfaction of the services set forth in Section II. (a) and other applicable provisions of this Agreement and the receipt of an invoice from the Orchestra for such amount, provided the Orchestra has not violated the terms and conditions of this Contract. The remaining two-thirds (\$10,000.00) of such sum shall be paid upon the completion to the City's satisfaction of the services set forth in Section II. (b) and other applicable provisions of this Agreement and the receipt of an invoice from the Orchestra for such amount, provided the Orchestra has not violated the terms and conditions of this Contract. In addition to the services set forth in Section II and as a condition precedent to the payment of any compensation by the City hereunder, the Chamber shall provide its quarterly financial statements to the City Manager on or before the 21st day of the month next following the month for which the which financial statement is issued. Such financial statements shall include statements of revenues and expenses. Further, as a condition precedent to the payment of any compensation by the City hereunder, the City Manager shall also receive from the Orchestra a copy of a quarterly report of the Orchestra's program activities, which report shall be provided to the City Manager on or before the 21st day following the end of each calendar year quarter. If the Orchestra fails to comply with the above or any other provision of this Contract, the City shall not pay, and Orchestra shall not be entitled to the payment of, any compensation or portion thereof. Within 90 days following the termination of the Orchestra's fiscal year, a financial statement for the Orchestra prepared by a Certified Public Accountant of all activities funded by this Contract shall be provided to the City Manager, which obligation shall survive the expiration or termination of this Contract. Such statement shall provide sufficient information as to support the accuracy of the monthly financial statements and the quarterly financial statements referenced in Section II. (f), above.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) The Orchestra agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by the Orchestra, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, THE ORCHESTRA AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH THE ORCHESTRA'S PERFORMANCE OF THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(C) WITH RESPECT TO THE ORCHESTRA'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (B) OF THIS SECTION, THE ORCHESTRA SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(d) IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH THE ORCHESTRA AND THE INDEMNITEE, THE ORCHESTRA'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (B) OF THIS SECTION WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO THE ORCHESTRA'S OWN PERCENTAGE OF RESPONSIBILITY.

(e) WITH RESPECT TO THE ORCHESTRA'S DUTY TO DEFEND SET FORTH HEREIN IN SUBSECTION (B) OF THIS SECTION, THE ORCHESTRA SHALL HAVE THE DUTY, AT ITS SOLE COST AND EXPENSE, THROUGH COUNSEL OF ITS CHOICE, TO LITIGATE, DEFEND, SETTLE OR OTHERWISE ATTEMPT TO RESOLVE ANY CLAIM, LAWSUIT, CAUSE OF ACTION, OR JUDGMENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED HOWEVER, THAT THE TOWN SHALL HAVE THE RIGHT TO APPROVE THE SELECTION OF COUNSEL BY THE ORCHESTRA AND TO REJECT THE ORCHESTRA'S SELECTION OF COUNSEL AND TO SELECT COUNSEL OF THE TOWN'S OWN CHOOSING, IN WHICH INSTANCE, THE ORCHESTRA SHALL BE OBLIGATED TO PAY REASONABLE ATTORNEY FEES AND THE EXPENSES ASSOCIATED THERETO. THE TOWN AGREES THAT IT WILL NOT UNREASONABLY WITHHOLD APPROVAL OF COUNSEL SELECTED BY THE ORCHESTRA, AND FURTHER, THE TOWN AGREES TO ACT REASONABLY IN THE SELECTION OF COUNSEL OF ITS OWN CHOOSING.

(f) IN THE EVENT THAT THE ORCHESTRA FAILS OR REFUSES TO PROVIDE A DEFENSE TO ANY CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE TOWN SHALL HAVE THE RIGHT TO UNDERTAKE THE DEFENSE, COMPROMISE, OR SETTLEMENT OF ANY SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION, THROUGH

COUNSEL OF ITS OWN CHOICE, ON BEHALF OF AND FOR THE ACCOUNT OF, AND AT THE RISK OF THE ORCHESTRA, AND THE ORCHESTRA SHALL BE OBLIGATED TO PAY THE REASONABLE AND NECESSARY COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED BY THE TOWN IN CONNECTION WITH HANDLING THE PROSECUTION OR DEFENSE AND ANY APPEAL(S) RELATED TO SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION.

(g) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF THE ORCHESTRA SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Orchestra has failed at the time of such cancellation and termination to provide all of the services set forth herein, Orchestra shall refund to the City that portion of funds paid to Orchestra under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Orchestra shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Orchestra and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

In addition, if at the time of such cancellation and termination no portion of the compensation set forth in this Agreement has been paid by the City to Orchestra, upon such cancellation and termination the City shall have no obligation whatsoever to make, and Orchestra shall have no right whatsoever to receive, any compensation hereunder or portion thereof.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, Orchestra shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Orchestra shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Orchestra from the funds provided by the City. The approval of Orchestra's annual budget creates a fiduciary duty in Orchestra with respect to the funds provided by the City under this Contract.

The funds paid to Orchestra pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Orchestra shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), Orchestra shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Orchestra of the funds paid to Orchestra under this Contract; and (b) a year-to-date report of the expenditures made by Orchestra of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Orchestra shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Orchestra shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Orchestra's fiscal year, Orchestra shall provide the City with a financial statement signed by the Chairman of Orchestra's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Orchestra's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Orchestra is that of independent contractor, and the City and Orchestra by the execution of this Contract do not change the independent status of Orchestra. No term or provision of this Contract or action by Orchestra in the performance of this Contract is intended nor shall be construed as making Orchestra the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Orchestra may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Orchestra are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. COPYRIGHT

Orchestra assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Orchestra's performances, transmissions or broadcasts, and Orchestra, without limiting any other indemnity given by Orchestra as set forth herein, agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Orchestra's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

XII. NON-DISCRIMINATION

During the term of this Contract, Orchestra agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

Orchestra shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

XV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Orchestra agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Orchestra's address:

P.O. Box 111333
Carrollton, Texas 75011
Attn: _____

XVIII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XIX. AUTHORITY TO EXECUTE CONTRACT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Contract represents the entire and integrated contract and agreement between the City and Orchestra and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Orchestra.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

TEXAS CHAMBER ORCHESTRA

By: _____
Ron Whitehead, City Manager

By: _____
Chairman of the Board

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #R9

SUMMARY:

Council authorization is requested for the city manager to enter into agreement with MBIA MuniServices Company for consulting services related to the receipt of local hotel occupancy taxes.

FINANCIAL IMPACT:

The 2004-05 budget anticipates receiving \$3.4 million in hotel occupancy tax. The amount quoted for review of the tax received from the Town's 22 hotels and motels is \$11,000 per year, or 0.3% of the amount projected. Although the budget did not include an appropriation for this service, the Town expects to generate additional revenue as a result of the review and analysis to offset the cost of the study. A mid-year budget amendment will be needed to recognize the additional expenditure and revenues.

BACKGROUND:

The Texas Municipal League contracted with MBIA MuniServices Company last year to allow cities to derive benefits from consulting services at reduced prices. Following a presentation the company made to attendees of last year's TML Conference, a proposal was solicited from MBIA that is included with this memo.

The company currently conducts hotel occupancy tax consulting services for 14 Texas cities. Finance staff checked the references of two cities, Mesquite and Mansfield, and both cities responded with very favorable comments regarding their experience with the company.

RECOMMENDATION:

It is recommended Council authorize the city manager, with consent of the city attorney, to enter into an agreement with MBIA MuniServices Company for hotel occupancy tax consulting services.

Attachments: Agreement
Exhibit A

CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (hereinafter "Agreement") is made as of _____, by and between MBIA MuniServices Company, a wholly owned subsidiary of MBIA Inc. with an office at 7335 N. Palm Bluffs Avenue, CA 93711 (hereinafter "MMC"), and the Town of Addison, Texas, a municipal corporation of the State of Texas (hereinafter "CITY").

1. SERVICES

Subject to the terms and conditions set forth herein, MMC shall provide to CITY the services set forth in Exhibit A attached hereto (the "Services") in exchange for the fees set forth therein. MMC shall not be required to perform, nor shall CITY be required to pay for, services not contained in Exhibit A.

2. INDEPENDENT CONTRACTOR STATUS

MMC is an independent contractor, and not an employee of CITY, who will be engaged in providing consulting services for CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and MMC or between CITY and any employee or agent of MMC. Both parties acknowledge that MMC is not an employee for state or federal tax purposes. MMC shall retain the right to perform services for others during the term of this Agreement. Nothing in this Agreement shall be construed as creating a partnership, joint venture, or joint enterprise between the parties hereto. Nothing in this Agreement shall be construed as designating MMC as an agent of CITY *[NOTE: Exhibit A makes no reference to MMC as an agent of the City]*. MMC shall have no authority to bind, contract, or obligate CITY, financially or otherwise. CITY shall not have any right to control the means by which MMC performs the Services including the facilities used, the employees, contractors, or agents assigned by MMC; provided always however that the Services to be provided by MMC shall be provided in a manner consistent with all applicable governmental standards, regulations, and laws governing or applicable to such Services. MMC shall be solely responsible for any approved subcontracts entered into in the course of performance of the Services for CITY and MMC shall be solely responsible for payment to the subcontractors.

3. COMPENSATION

- .1 In consideration for the Services to be performed by MMC, CITY agrees to pay MMC the rates set forth in Exhibit A.
- .2 MMC shall submit timely invoices for all Services rendered in accordance with Exhibit A *[NOTE: when are invoices to be submitted; monthly?]*. Each invoice shall include a description of the Services and work performed by MMC in connection therewith, true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and any such additional materials as the CITY may reasonably request in connection with an invoice and/or the compensation paid to MMC. Payment will be made to MMC within thirty (30) days of receipt of MMC's invoice therefore. Any amounts which remain unpaid after thirty (30) days shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.
- .3 MMC shall be solely responsible for all costs and expenses incident to the performance of Services for CITY, including but not limited to, all costs of equipment provided by MMC, all fees, fines, licenses, bonds or taxes required of or imposed against MMC and all other of MMC's costs of doing business. CITY shall not be responsible for expenses incurred by MMC in performing Services for CITY, except as noted in Exhibit A, or such expenses that receive prior written approval from CITY.

4. CONFIDENTIALITY

- .1 During the term of this Agreement, each party may have access to certain confidential information of the other including such party's products, services, technical data, trade secrets, inventions, processes, and constituent information which, if disclosed, is disclosed by to the recipient marked as confidential or proprietary. All such information shall be deemed "Confidential Information". Each party shall use the Confidential Information of the other solely for performance of this Agreement, and all Confidential Information shall remain the sole property of the respective parties. With regard to Confidential Information, each party shall use the same care as it uses to maintain the confidentiality of its own confidential information, which shall be no less than reasonable care, and shall not make disclosure of the Confidential Information to any third party without the written consent of the Disclosing Party, except to officials, officers, employees, consultants, advisors, representatives, or agents. Information shall not be deemed confidential (whether labeled or identified as such or not) if it (i) is rightfully known to the receiving party prior to receipt from the disclosing party as reasonably evidenced by such party; (ii) becomes known to the receiving party from a source other than one who is under an obligation of confidentiality to the disclosing party; (iii) is or becomes publicly known or otherwise ceases to be confidential other than by an unauthorized act; or (iv) is independently developed by the recipient thereof or its agents as evidenced by their records. At all times, in accordance with Graham-Leach Bliley and other applicable State and Federal regulations, taxpayer information containing Personally Identifiable Information, as defined in applicable regulations, shall be held in the strictest confidence by MMC.
- .2 If a subpoena or other legal process in any way concerning Confidential Information is served upon a party to which Confidential Information has been disclosed ("Recipient"), the Recipient shall promptly notify the Disclosing Party and shall cooperate with the Disclosing Party, at the latter's expense, in any lawful effort to contest the validity of such subpoena or other legal process.
- .3 The parties agree that a breach of the terms of Section 4.1 or 4.2 would result in irreparable injury to the non-breaching party for which a remedy in damages would be inadequate. The parties agree that in the event of such

breach or threatened breach, the non-breaching party shall be entitled to, in addition to any other remedies available at law or in equity, seek an injunction to prevent the breach or threatened breach.

- .4 The obligation of confidentiality as set forth in Section 4.1 shall continue for a period of three (3) years from the date of disclosure of the information, provided, however, that for any information which constitutes a Trade Secret (as defined by applicable law), the obligation of confidentiality shall continue during the entire term of this Agreement and shall survive the termination of this Agreement indefinitely. MMC's obligation of confidentiality with respect to any confidential taxpayer data shall continue in accordance with applicable federal, state and local regulations.
- .5 Notwithstanding the foregoing or any other provision of this Agreement, Confidential Information may be disclosed by the recipient thereof or its agents pursuant to and in accordance with any applicable law, rule, or regulation (including, without limitation, the Texas Public Information Act, Chapter 552, Tex. Gov. Code, as amended or superseded) or any order or directive of a court or other governmental agency or entity or pursuant to the direction of the Texas Attorney General, and this Agreement and Confidential Information is made subject thereto. In addition, this Agreement is not Confidential Information.

5. TERM AND TERMINATION

- .1 Term; Termination. This Agreement shall be effective as of the date of the last signature hereto and shall continue in full force and effect for a period of three (3) years, subject, however, to the termination provisions of this Agreement and to the annual appropriation and budgeting of funds by the CITY (in the CITY's sole discretion) sufficient to make the payments hereunder (and in the event funds are not so appropriated and budget by the CITY, this Agreement shall automatically terminate upon the expiration of the CITY's fiscal year in which funds were appropriated and budgeted). Notwithstanding any other provision of this Agreement, at any time and for any reason or no reason, either party may terminate this Agreement effective on no less than thirty (30) days' notice. Termination of this Agreement shall be governed by the provisions of Section 5.3 below.
- .2 Event of Default. Any of the following shall constitute an event of default ("Event of Default") under this Agreement: (a) CITY fails to pay any amount when due hereunder (after ten (10) days prior written notice of such failure to pay), or (b) a material breach by either party of this Agreement. If an Event of Default occurs, the non-breaching party shall notify the breaching party of the Event of Default and provide the breaching party thirty (30) days to cure (except in the case of non-payment for which the cure period shall be ten (10) days) or such amount of time as is reasonable given the circumstances. If the breaching party fails to effect cure within the time allowed, then the non-breaching party may, at its option, terminate this Agreement effective immediately upon notice.
- .3 Effect of Termination. Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay MMC for Services properly performed to the CITY's satisfaction through the effective date of termination for which MMC has not been previously paid. In addition, because the Services performed by MMC prior to termination may result in CITY's receipt of revenue after termination which are subject to MMC's fee in accordance with this Agreement, CITY shall remain obligated after termination to provide to MMC such information as is necessary for MMC to calculate the compensation due as a result of this receipt of revenue by CITY and CITY shall remain obligated to pay MMC's invoices therefore in accordance with the terms of this Agreement; provided, however, that MMC's right to receive compensation or payment of any kind whatsoever, pursuant to or in connection with this Agreement or any of its Services, after the expiration or termination of this Agreement shall end no later than twelve (12) calendar months following the expiration or termination of this Agreement.

6. EQUAL EMPLOYMENT OPPORTUNITY

During performance of this Agreement, MMC, for itself, its permitted assignees and successors in interest, agrees as follows:

- .1 Compliance With Regulations: MMC shall comply with Executive Order 11246, "Equal Employment Opportunity" and labor regulations (41 C.F.R. Part 60), hereinafter referred to as the "Regulations."
- .2 Nondiscrimination: MMC, with regard to any work performed pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, or veteran status in the selection and retention of employees, subcontractors, the procurements of materials or leases of equipment.
- .3 Solicitation for Subcontractor, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by MMC for work to be performed under any subcontract, including procurements of materials or equipment, such potential subcontractor or supplier shall be notified by MMC of MMC's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, or veteran status.
- .4 Information and Reports: MMC shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of MMC is in the exclusive possession of another who fails or refuses to furnish this information, MMC shall so certify to CITY and shall set forth what efforts it has made to obtain the information. In addition, MMC shall keep complete and accurate records of the Services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to the CITY upon request.
- .5 Incorporation of Provisions: MMC shall include the provisions of paragraphs 6.1 through 6.4 in every subcontract issued pursuant to this Agreement. MMC shall take such action with respect to any Regulations, order or instructions issued pursuant thereto. MMC shall take such action with respect to any subcontract or procurement as CITY may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided,

however, that in the event MMC becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, MMC may request CITY to enter such litigation to protect the interests of CITY.

7. WARRANTIES, REPRESENTATIONS AND INDEMNIFICATION

- 1 By MMC. MMC warrants and represents that all Services shall be performed by persons with the skills, experience, expertise, and abilities necessary and consistent with the standards of professionalism prevalent in the industry, and that the Services shall be provided with a high degree of quality and responsiveness. The Services and deliverables shall be provided free and clear of the proprietary claims of third parties. All Services shall be provided in accordance with applicable local, state and federal laws, rules, standards, and regulations, including, without limitation, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and applicable state laws and regulations. THIS REPRESENTS THE FULL AND COMPLETE WARRANTY STATEMENT OF MMC HEREUNDER.
- 2 Indemnification.
 - (a) IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT, MMC AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH (A) MMC'S PERFORMANCE OF THIS AGREEMENT, (B) THE CONDUCT OF MMC'S BUSINESS, (C) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF MMC'S OBLIGATIONS UNDER THIS AGREEMENT, (D) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY MMC UNDER THIS AGREEMENT, AND (E) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF MMC, ITS OFFICERS, PARTNERS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUBCONTRACTORS, ASSOCIATES, OR ANY PERSON FOR WHOM MMC IS LEGALLY LIABLE, UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.
 - (b) WITH RESPECT TO MMC'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), MMC SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.
 - (c) With respect to MMC's duty to defend set forth herein in subsection (a), MMC shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the CITY shall have the right to approve the selection of counsel by MMC and to reject MMC's selection of counsel and to select counsel of the CITY's own choosing, in which instance MMC shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The CITY agrees that it will not unreasonably withhold approval of counsel selected by MMC, and further, the CITY agrees to act reasonably in the selection of counsel of its own choosing.
 - (d) In the event that MMC fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the CITY shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of MMC, and MMC shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the CITY in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.
 - (e) The defense, indemnity, and hold harmless obligations set forth in this Agreement shall survive the expiration, termination, or cancellation of this Agreement.

8. GENERAL PROVISIONS

- .1 Personnel. At any time, CITY may request removal or replacement of personnel assigned by MMC and MMC shall promptly replace such personnel. The time for any deliverables required or any increase in costs shall be adjusted to reflect any adverse impact resulting from the change in personnel.
- .2 Gratuities, Gifts, Conflict of Interest. MMC shall, at all times, comply with any CITY policies regarding gifts, gratuities, or conflicts of interest. At no time shall MMC, an employee, agent, director, or contractor offer or accept any gift or gratuity from a third party who may be subject to findings resulting from Services, to or from any CITY official, employee, contractor, or agent, or from any other party where such gift or gratuity could be construed as a conflict of interest. MMC, its officers, directors, employees, agents, and contractors shall avoid all conflicts of interest, financial or otherwise, or the appearance thereof, in the performance of this Agreement or the applicable Services.
- .3 Ownership of Work Product. MMC shall retain all right, title, and interest in and to the processes, procedures, models, inventions, software, ideas, know-how, and any and all other patentable or copyrightable material used, developed, or reduced to practice in the performance of this Agreement. Upon payment therefore, CITY shall have all right, title, and interest in and to the reports, charts, graphs, and other deliverables produced by MMC in the performance of this Agreement.

- .4 Assignment. Neither Party has the authority to nor may assign, transfer, pledge, subcontract, or otherwise convey (together, "assign" or "assignment") in any manner whatsoever (including, without limitation, by operation of law) this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party. Any assignment without such prior written consent shall be null and void. Any violation of the provisions of this Section shall render this Agreement voidable at the sole option of the non-assigning Party, and if so voided, this Agreement shall immediately terminate.
- .5 Insurance.
- a. Public Liability. During the term of this Agreement, MMC shall maintain in full force and effect a policy of public liability insurance with minimum coverages in accordance with the requirements provided by CITY to MMC. MMC shall cause CITY, its officials and employees to be named on all liability policies described above as insured as respects activities undertaken pursuant to the parties' respective obligations pursuant to this Agreement.
 - b. Worker's Compensation. During the term of this Agreement, MMC shall fully comply with the terms of the law of Texas concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability MMC may have for worker's compensation.
- .6 Severability. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed as nearly as possible to reflect the original intent of the parties and the remainder of the provisions shall remain in full force and effect.
- .7 Waiver; Survival; Cumulative Rights. Either Party's failure to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of that or any other of its rights hereunder at any later date or time. All obligations arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the parties hereto shall survive completion of the Services hereunder and expiration or termination of this Contract. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies, and said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise.
- .8 Force Majeure. Neither party shall be liable for failing to perform its obligations hereunder where delayed or hindered by war, riots, embargoes, strikes or acts of its vendors or suppliers, accidents, acts of God, or any other event beyond its reasonable control.
- .9 Notices. All notices, including notices of address changes, provided hereunder shall be deemed received on the third day after mailing if sent by mail, or immediately if hand-delivered, or twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier (with next-day delivery). Notices shall be sent to the following:
- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>If to MMC:
 MBIA MuniServices Company
 7335 N. Palm Bluffs Avenue
 Fresno, CA 93711
 Attn: Corporate Counsel</p> | <p>If to CITY:
 Town of Addison
 P.O. Box 9010
 Addison, TX 75001
 Attn: Randolph C. Moravec, Finance Director</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
- .10 Copies. This Agreement may be executed in separate counterparts including facsimile copies, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument and legally binding upon the parties.
- .11 Entire Agreement. This Agreement, including the Exhibits attached hereto and made part hereof, constitutes the entire agreement between MMC and CITY with respect to the Services provided. This Agreement supercedes and replaces any and all prior agreements, of whatever kind or nature, with respect to the Services provided hereunder. Any prior agreements, discussions, or representations not expressly set forth herein are of no force or effect.
- .12 No Oral Modification; No Third Party Beneficiaries. No modification of this Agreement shall be effective unless set forth in writing and executed with the same formality as this Agreement. No waiver of the requirements of this Section shall be effective unless in writing and signed by the CEO for MMC. The provisions of this Agreement are solely for the benefit of the parties hereto and shall not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.
- .13 Construction; Venue; Time. This Agreement shall be construed in accordance with the laws of the State of Texas without regard to its conflict of laws principals. Venue for any action under this Agreement shall lie in Dallas County, Texas. Time is of the essence of this Agreement.
- .14 Headings; Authorized Persons. The section headings herein are for convenience and reference purposes only and shall not serve as a basis for construction or interpretation. The undersigned persons are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.
- .15 Order of Precedence. In the event of any conflict between the terms of this Agreement and the terms of Exhibit A, the terms of this Agreement shall prevail. No additional terms, PO Terms and Conditions, or oral or written representations of any kind shall be of any force and effect unless in writing and executed with the same formality as this Agreement.

- .16 Partial Payment. Subject to the other terms and conditions of this Agreement, no receipt by MMC of an amount less than CITY's full amount due will be deemed to be other than payment "on account", nor will any endorsement or statement on any check or any accompanying letter effect or evidence an accord and satisfaction. MMC may accept such check or partial payment without prejudice to MMC's right to recover the balance or pursue

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EXECUTED as of the day and year first above stated.

MBIA MuniServices Company/MMC

CITY OF ADDISON

By: _____
Marc Herman

By: _____

Title: President

Title: _____

Date: _____

Date: _____

ATTEST:

By: _____
Kevin Cerutti

CITY SECRETARY

Title: Chief Financial Officer

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Neil Ackerman, Corporate Counsel

CITY ATTORNEY

Exhibit A

Local Hotel Occupancy Tax and Hospitality Consulting Services

OBJECTIVES AND METHODS

MBIA MuniServices (MMC) Local Hotel Occupancy Tax and Hospitality Consulting Program is intended to assist the City in realizing all of the lodging tax revenue to which it is entitled through conducting annual analyses of returns and, when warranted, on-site examinations of records; providing annual reports reflecting and projecting revenue trends; identifying any providers who should be subjected to field auditing or other scrutiny; offering ordinance and administrative enhancements as needed; and educating lodging providers to ensure appropriate collection and remittance of the lodging tax. The term of this agreement is three years (subject, however, to the terms of the Agreement to which this Exhibit A is attached), although performance shall be annual with respect to certain services as indicated herein below.

LOCAL HOTEL OCCUPANCY TAX AND HOSPITALITY CONSULTING (HOT) PROGRAM:

ORDINANCE, RETURN AND ADMINISTRATION REVIEW SERVICES (INCEPTION OF CONTRACT):

- Review City's lodging tax ordinance, return form and administrative procedures;
- Recommend potential enhancements to better acquaint the lodging providers with their responsibilities in collecting and paying-over the tax, and to improve revenue generation and administration by the City.
- Provide a written report to City, including suggestions for new ordinance language, form design and process development, as applicable; and
- Meet with City to discuss findings, and to identify any recommendations for further review.

ANALYSIS & COMPLIANCE REVIEW SERVICES (ANNUALLY):

- Obtain and analyze lodging provider return information in the possession of the City initially for the prior three (3) year period, thereafter annually for the prior year;
- Conduct unobtrusive collection of information on each property, including number of rooms, occupancy rate, physical condition, business dynamics, etc.;
- Provide a report to the City on trend analysis to include projections for gross rent revenue and occupancy rates, and other information conducive to assessment of visitation.
- Perform discovery services designed to identify and locate lodging providers not properly registered with the City and not appearing on the City rolls as lodging tax remitters;
- Analyze lodging provider return information from the past three years in order to identify unusual or suspicious reporting and/or activities that warrant further review; and
- Provide a detailed report to the City identifying lodging providers who require additional investigation or examination to determine their compliance with the City's lodging tax ordinance;

FIELD AUDIT SERVICES (AS DEEMED NEEDED BY ANALYSIS):

- Perform on-site examinations of the records of those providers identified through analysis to warrant further investigation, but only as authorized by City;
- Provide City staff with a detailed list of all records required to be made available by lodging providers for the further reviews, together with a draft engagement announcement letter to be sent to each lodging provider requiring examination;

- In coordination with City staff, schedule and conduct reviews at the property locations of those providers identified and authorized for examination;
- Verify accuracy of filed lodging tax returns with daily and monthly activity summaries;
- Review a random sample of the daily and monthly summaries to determine if the daily summaries reconcile to the monthly summaries;
- Review bank statements to verify that deposits reconcile with the reported revenue on the lodging tax returns;
- Review exempted revenue for proper qualifying documentation;
- Review a random sample of exempted guest revenue and trace registration and/or other source documents to verify compliance with the City ordinance;
- Where possible, compare the State and federal tax filings with the lodging tax returns;
- For each error/omission identified and confirmed, submit substantiating documentation to designated City staff in order to facilitate collection of revenue due from lodging providers for prior periods;
- Coordinate with designated City official(s) as necessary to review findings and recommendations;
- Provide assistance to City in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination; and
- Prepare and document any changes to the review findings and provide revised tax, interest or penalty amounts due the City.

SEMINAR SERVICES (ONCE WHEN DESIRED BY CITY):

- Conduct a seminar session with City staff to present and discuss issues pertaining to lodging tax administration. Key topics for normal city staff sessions include applicable state and federal law, return analysis, deficiency determination techniques and collections. City may add select topics of City concern to be reviewed at this session;
- Conduct a seminar session for local lodging providers to disseminate information intended to further the providers' understanding of their duties and responsibilities under the City's lodging tax ordinance, their responsibilities for collections and record keeping, and to address any points requiring clarification in the lodging providers' understanding of the City's lodging tax ordinance;

City staff shall be encouraged to attend both seminar sessions so as to become familiar with the issues and concerns facing local lodging providers and to interact directly with the lodging providers.

COROLLARY CONSULTING

Upon mutual agreement between MMC and the CITY as to the scope of services to be provided, MMC shall provide to CITY such additional consulting services as CITY may request. Consulting services otherwise included in this Addendum will not be subject to MMC's fees for Corollary Consulting as set forth below.

COST PROPOSAL

HOT PROGRAM

MMC shall provide the Local Hotel Occupancy Tax and Hospitality Consulting Services for a three year term, subject, however, to the terms of the Agreement to which this Exhibit A is attached. Such Services shall be provided at an annual Fixed Fee per lodging property located in the CITY as per the following classification of lodging properties: five hundred dollars (\$500) per standard lodging property, five hundred dollars (\$500) per timeshare property, and two hundred fifty dollars (\$250) per bed and breakfast

facility. One-half (50%) of the first year's Fixed Fee shall be invoiced upon execution of this Agreement with the remaining fee invoiced following completion of analysis and audit services. Similar invoicing will occur for the second and third years of the Agreement. Additionally, MMC shall be entitled to Reimbursement of reasonable travel and other out-of-pocket expenses associated with the conduct of field audits and seminars, if such expenses are approved in advance by the CITY. Such Reimbursement shall be billed incrementally.

COROLLARY CONSULTING

For any agreed scope of services to be performed by MMC for CITY as Corollary Consulting as provided for herein, MMC shall be compensated on a Time and Materials basis. MMC's standard hourly rates are as follows:

- Principal - \$175/hour
- Director - \$150/hour
- Manager - \$125/hour
- Senior Analyst - \$100/hour
- Analyst - \$75/hour
- Administrative Support - \$50/hour

All reimbursable expenses shall receive prior approval from the CITY and shall be reimbursed at cost to MMC.

Council Agenda Item: #R10

SUMMARY:

Consideration of a resolution authorizing the City Manager to enter into a Federal Aviation Administration Grant Agreement administered by the Texas Department of Transportation, to make airport improvements.

FINANCIAL IMPACT:

Budgeted Amount: \$40,000 Design Cost

BACKGROUND:

The Town of Addison is applying to receive an FAA grant administered by the Texas Department of Transportation, Aviation Department under the State Block Grant program; the project will consist of design and construction of an airport terminal administration building. The project designs are anticipated to be accomplished in FY 2005 and the construction in FY 2006. The grant will be a 50/50 matching grant. \$400,000 TXDOT Funds and \$400,000 Town of Addison Airport Funds.

This item is to start the grant process with the Texas Department of Transportation. The Town will have up to two-years to design and construct a facility.

Funds required for the Town's share of design costs is \$40,000 and is available in the Airport fund.

RECOMMENDATION:

Staff recommends approval.

Attachments: Resolution

MA

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R05-XXX

A RESOLUTION OF THE TOWN OF ADDISON, TEXAS APPROVING A REQUEST FOR FINANCIAL ASSISTANCE FROM THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF AN AIRPORT TERMINAL ADMINISTRATION BUILDING ON ADDISON AIRPORT.

WHEREAS, the TOWN OF ADDISON intends to make certain improvements to the ADDISON AIRPORT and currently has on site management, or will have on site management prior to construction, at the airport facility and aviation fuel available; and

WHEREAS, the project is described as: Site planning, design, and construction of the terminal building and associated site improvements. Site improvements may include an entrance road, vehicle parking, sidewalks, site utilities, site grading and storm drainage, aircraft parking, and security fencing; and

WHEREAS, the TOWN OF ADDISON hereby requests financial assistance from the Texas Department of Transportation for these improvements;

WHEREAS, the TOWN OF ADDISON will participate at the maximum level of the grant offer of \$600,000 for building design and construction and \$200,000 for vehicle parking improvements. This is a 50/50 matching grant, \$400,000 TXDOT Funds and \$400,000 Town of Addison Funds.

NOW, THEREFORE, BE IT RESOLVED, that the TOWN OF ADDISON CITY COUNCIL hereby directs RON WHITEHEAD, CITY MANAGER to execute on behalf of the TOWN OF ADDISON, at the appropriate time, and with the appropriate authorizations of this governing body, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the improvements to the ADDISON AIRPORT.

Council Agenda Item: #R11

SUMMARY:

Council approval is requested for the award of bid to BMW Motorcycles of North Dallas in the amount of \$56,994.00 for the purchase of (3) 2004 BMW Police Motorcycles.

FINANCIAL IMPACT:

Funds Available: Capital Equipment Replacement Fund (CERF)

Cost: \$56,994

Budgeted Amount: \$54,000

Auction proceeds and interest income is available in the CERF to fund the cost difference.

BACKGROUND:

The Town has six Police motorcycles assigned to the traffic division. Three of these are 1997 Police Kawasaki's that have been in service for seven-years and have reached the end of their useful life and are ready to be retired to auction. The other three are Police BMW motorcycles ((1) 2000 model, (2) 2002 models). The BMW motorcycles have performed well, offer additional safety and performance features, and operate with minimal maintenance required.

The Purchasing Division notified 124 vendors with 5 vendors requesting specifications. One bid was received.

RECOMMENDATION:

Staff recommends the Council award the purchase to BMW Motorcycles of North Dallas.

Attachment: Bid Tab

Police Motorcycles
Bid NO 05-12
DUE: February 8, 2005
2:30 PM

BIDDER	SIGNED	Bid Bond	Base Bid
BMW Motorcycles of North Dallas	Y	Y	\$56,994.00

Shanna N. Sims

Shanna N. Sims, Budget and Procurement Manager

Val Benavides

Witness

Council Agenda Item: #R12

SUMMARY:

Consideration of a Resolution approving an estoppel letter agreement from Hibernia National Bank regarding certain financing provided by Hibernia national Bank to Eagle Land & Cattle Co., Tenant under a certain Ground Lease at Addison Airport in which the Town of Addison is the Landlord, the leased premises under the Ground Lease being certain property located at the Airport and specifically described in the Ground Lease, and being generally located at 16151 Addison Road, (Taxiway Reference Building #L-17), Addison, TX 75001.

BACKGROUND:

The subject Ground Lease is for certain real property located in the southwest corner of Addison Road and Glenn Curtiss with the physical address of 16151 Addison Road (also referenced as Taxiway Building #L-17). The property consists of 14,398 square feet of combined hangar/office space on .749 acres (62,605 square feet) of land (see Exhibit 1: Location Map and Exhibit 2: Aerial View of ADS).

In May of 2003, the Town of Addison consented to: i) the change of control of Eagle Land & Cattle Co. to its current ownership; ii) the creation of a 1st and 2nd leasehold lien for the total sum of \$700,000, and iii) the sublease by and between Eagle Land & Cattle Co. (reconstituted) and American Flyers, Inc., the subtenant.

In accordance with Paragraph 9 of the Ground Lease, Landlord must give prior written consent to the creation of a leasehold mortgage that may encumber the demised premises. The Tenant is seeking the Landlord's consent to the creation of a leasehold mortgage in favor of Hibernia National Bank. The loans proceeds will pay off the existing debt and the new leasehold lien will replace the aforementioned 1st lien (Gateway National Bank - \$375,000) and 2nd lien (Harrington/McCormick -\$325,000).

RECOMMENDATION:

Eagle Land & Cattle Co and its subtenant, American Flyers, have proven to be excellent tenants, contributing to the growth and stability of Addison Airport since 1989. Airport Management recommends the Town of Addison consent to creation of the leasehold mortgage in favor of Hibernia National Bank and authorize the City Manager to execute the estoppel letter dated December 8, 2004 presented here as Exhibit 3.

The City Attorney has reviewed this matter. Staff recommends approval.

Attachments: Lisa Pyles - Memorandum

- Exhibit 1: Location Map
- Exhibit 2: Aerial View
- Exhibit 3: Estoppel Letter dated December 8, 2004
- Exhibit 4: Ground Lease dated 9/4/1980
 - Amendment to Ground lease (1/12/1983)
 - Special Events Agreement 1/15/1990)
 - Assignment to Lease (1/15/1990)
 - Change In Control Agreement (5/30/2003)
 - Estoppel Letter to Harrington & McCormick (5/30/2003)
 - Estoppel Letter to Gateway National Bank (5/30/2003)



TO: Mark Acevedo, Administrator
Facilities & Fleet Services
Town of Addison

FROM: Lisa Pyles, Airport Director
Bill Dyer, Real Estate Manager

DATE: February 10, 2005

SUBJECT: Requested Action by the Town of Addison
Eagle Land & Cattle Co. d/b/a American Flyers, Inc.
Ground Lease #0340-2001

Requested Action and Recommendation by Airport Operator

Consideration of the Town's consent to the creation of a first-lien leasehold mortgage and deed of trust in the sum of \$700,000 to be evidenced by an estoppel letter in favor of the lender, Hibernia National Bank.

Background Information

The subject Ground Lease is for certain real property located in the southwest corner of Addison Road and Glenn Curtiss with the physical address of 16151 Addison Road (also referenced as Taxiway Building #L-17). The property consists of 14,398 square feet of combined hangar/office space on .749 acres (62,605 square feet) of land (see Exhibit 1: Location Map and Exhibit 2: Aerial View of ADS).

The Ground Lease was entered into by and between the Town of Addison and William R. White on September 4, 1980 with a commencement date of June 30, 1980. The lease has a term of 480 months and is due to expire on June 29, 2020. The lease was amended on

January 12, 1983, increasing the original demised premises to its current configuration. The Ground Lease was subsequently assigned to Eagle Land & Cattle Co. (now the Tenant) by an agreement entered into and consented to by the Town of Addison on January 15, 1990.

In May of 2003, the Town of Addison consented to: i) the change of control of Eagle Land & Cattle Co. to its current ownership; ii) the creation of a 1st and 2nd leasehold lien for the total sum of \$700,000, and iii) the sublease by and between Eagle Land & Cattle Co. (reconstituted) and American Flyers, Inc., the subtenant.

Summary of Ground Lease Terms

Property Description	
Date of Report	2/10/2005
Property Number	20
Property Address	16151 Addison Road
Ramp Address	T-17
ADS Survey #	34
Property Type	Conventional
Land Area	32,605
Hangar Area	11,750
Office/Shop Area	2,648
Total Building Area	14,398
Year Built	1980
Est. Economic Life	35
End of Economic Life	2015
% Obsolescent	71%
Hangar Door Clearance	

Lease Information	
Lease #	0340-2001
Tenant Name	Eagle Land and Cattle
Doing Business As	American Flyers, Inc. (sub)
Primary Contact	Hugh Lawrence
Primary Contact Phone	
Lease Type	Ground Lease
Lease Commencement Date	6/30/1980
Lease Expiration Date	6/20/2020
Years Remaining in Term	15.58
Current Monthly Rent	\$ 1,314.99
Current Annual Rent	\$ 15,779.88
Annual Rent /SF Land	\$ 0.48
Est. Remaining Contract Rent	243,509
Rent Adjustment	2 yr CPI

Current Status

The Eagle Land & Cattle Co. currently subleases the entire premises to being to American Flyers, Inc. American Flyers, Inc. has been providing industry-leading flight training for over 64 years from its 12 locations within the United States and has been operating an FAA-approved flight training facility in North Texas since 1974 with Addison Airport being its regional headquarters since 1989.

Eagle Land & Cattle Co. and its subtenant, American Flyers, Inc., are in good standing with Addison Airport and Town of Addison with no known defaults or facts or circumstances that would otherwise constitute an event of default per the terms and conditions of the Ground Lease.

Proposed Actions

In accordance with Paragraph 9 of the Ground Lease, Landlord must give prior written consent to the creation of a leasehold mortgage that may encumber the demised premises. The Tenant is seeking the Landlord's consent to the creation of a leasehold mortgage in favor of Hibernia National Bank (the "Bank"). The loans proceeds will pay off the existing debt and the new leasehold lien will replace the aforementioned 1st lien (Gateway National Bank - \$375,000) and 2nd lien (Harrington/McCormick -\$325,000).

In consideration of making the loan, the Bank requires the written acknowledgement of Landlord in the form of the estoppel letter attached here as Exhibit 3. The estoppel letter states:

1. The Landlord takes notice of the Deed of Trust (Exhibit A to the Estoppel Letter) but that the lien is subordinate and inferior to the Ground Lease.
2. Landlord has no actual knowledge of the existence of any default by the Tenant under the Ground lease.
3. Landlord agrees to give the Bank prompt notice of any default and Bank has fifteen (15) days to cure the default.
4. In the event of foreclosure, Landlord agrees to recognize the Bank or third party (as approved by Landlord) as the Tenant under the Ground Lease
5. If the Bank succeeds in the interest of Tenant, Bank may, with the prior written consent of Landlord, assign its leasehold right, title, and interest in the Ground Lease
6. Landlord may withhold consent for any one of the following:
 - a. The proposed assignee is not of character or reputation consistent with Addison Airport and, or is engaged in a business inconsistent with the master or strategic plan of the Airport as determined by Landlord,
 - b. The proposed assignee has not demonstrated sufficient financial responsibility or credit-worthiness to the satisfaction of landlord,
 - c. The proposed use by assignee is inconsistent with the Ground lease,
 - d. The proposed assignment would cause the Landlord to be in violation of another lease or agreement (including grant assurances),
 - e. If Tenant is in default at the time consent of assignment is requested,
 - f. If the proposed assignee does not intend to occupy the entire premises for a substantial portion of the remaining term of the Ground Lease,
 - g. Landlord may delay its consent for up to 45 days from the date all information requested by Landlord in support of the request.

The city attorney has reviewed the above estoppel letter.

Conclusion and Recommendation of Airport Operator

Eagle Land & Cattle Co and its subtenant, American Flyers, have proven to be excellent tenants, contributing to the growth and stability of Addison Airport since 1989. Airport

Management recommends the Town of Addison consent to creation of the leasehold mortgage in favor of Hibernia National Bank and authorize the City Manager to execute the estoppel letter dated December 8, 2004 presented here as Exhibit 3.

Summary of Attached Exhibits

- Exhibit 1: Location Map
- Exhibit 2: Aerial View
- Exhibit 3: Estoppel Letter dated December 8, 2004
- Exhibit 4: Ground Lease dated 9/4/1980
Amendment to Ground lease (1/12/1983)
Special Events Agreement 1/15/1990)
Assignment to Lease (1/15/1990)
Change In Control Agreement (5/30/2003)
Estoppel Letter to Harrington & McCormick (5/30/2003)
Estoppel Letter to Gateway National Bank (5/30/2003)

EXHIBIT 1

LOCATION MAP

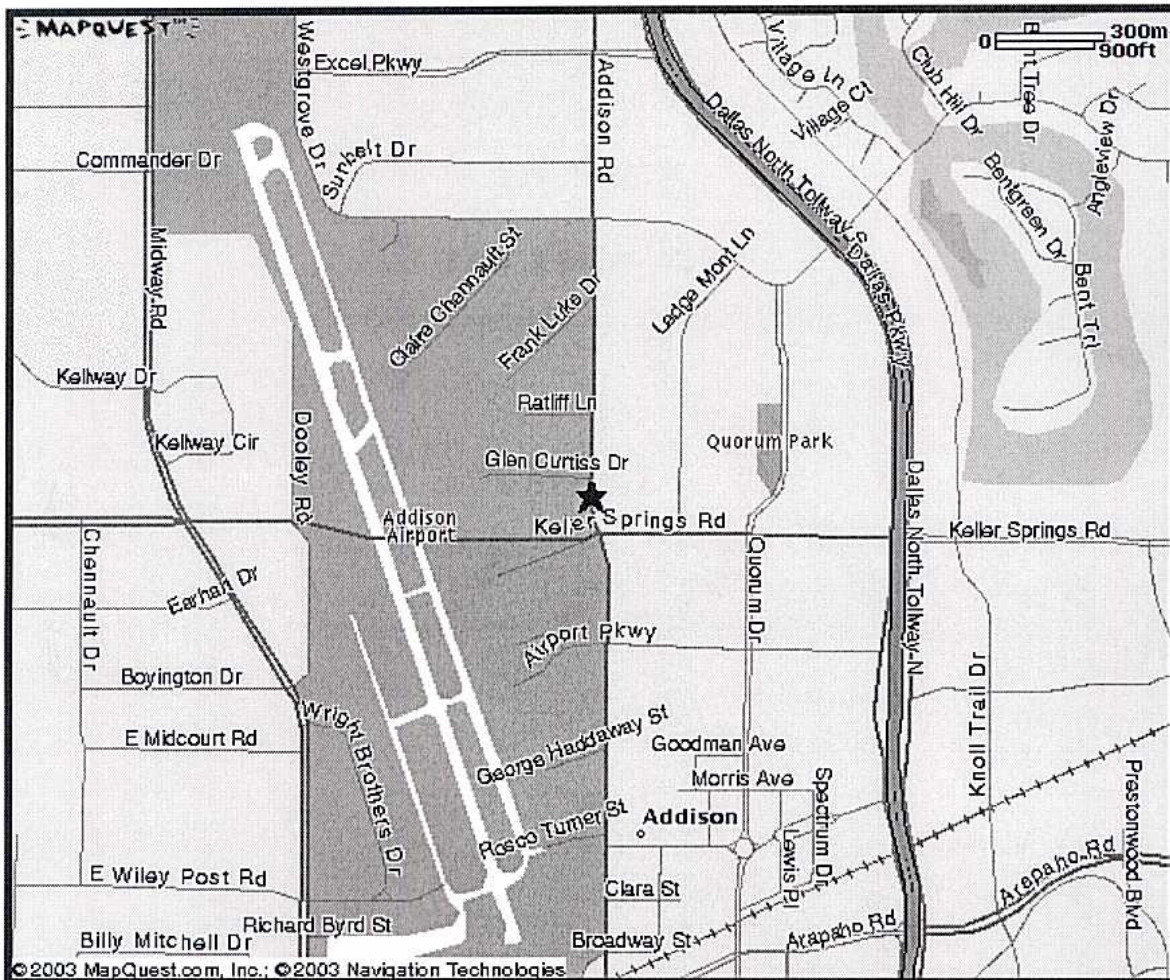


EXHIBIT 2

Aerial View of 16151 Addison Road



EXHIBIT 3

Estoppel Letter In Favor of Hibernia Bank
December 8, 2004



December 8, 2004

Town of Addison
PO Box 9010
Addison, TX 75001

RE: Ground Lease ("Lease") dated September 4, 1980 (amended by that Amendment to the Ground Lease entered into on January 12th 1983) (The said Lease, as amended, being referred to herein as the "Ground Lease"), by and among the City of Addison, Texas a municipal corporation (the "City", the same being the Town of Addison, Texas), Addison Airport of Texas, Inc., a Texas corporation, as Landlord (the City now being the sole Landlord under the Lease, the "Base Lease" (as defined in the Ground Lease) having expired, and the City alone being referred to herein as the "Landlord") and William R. White ("White"), as tenant; (the said Ground Lease then having been assigned by White to Eagle Land & Cattle Co. ("Eagle" or "Tenant"), by that Assignment of Lease between White and Eagle entered into on January 15, 1990); whereby Landlord leases to Eagle certain real property (the "Demised Premises") located at the Addison Airport in Dallas County, Texas, as specifically described in the Ground Lease (and being generally located at 16151 Addison Rd (Taxiway Reference Building #L-17), Addison, TX 75001), on the terms and conditions set forth in Ground Lease.

Gentlemen:

Hibernia National Bank, a national banking association (the "Bank"), intends to make a loan in the amount of \$700,000 to Eagle as tenant under the Ground Lease to refinance the Tenant's leasehold interest in the Demised Premises, including the Tenant's right and interest in the Ground Lease, in exchange for Eagle's promissory note (the "Loan"), which Loan will be secured by a leasehold deed of trust lien solely against the leasehold interest of Eagle under the Ground Lease to be created pursuant to a leasehold deed of trust (the "Deed of Trust") to be executed by Eagle to Fay F. Paysse, as Trustee for the benefit of Bank, which Deed of Trust shall be substantially be in the form of the Leasehold Deed of Trust attached hereto as Exhibit A, and the same shall be subordinate and inferior to the Ground Lease and Landlord's lien (contractual and statutory) and other rights thereunder and all terms and conditions thereof.

The Bank has advised Eagle that, as a condition to making the Loan, Bank requires the written acknowledgment of Landlord to the execution by Eagle of the above-described Deed of Trust and the written acknowledgement of the Landlord to the statements set forth in this letter. Therefore, by executing the enclosed copy of this letter and returning it to the undersigned, Landlord here - by specifically states as follows (and notwithstanding any statement or provision hereof, Landlord's statements herein do not constitute shall be deemed a waiver or release of any of the Landlord's rights under the Lease):

1. Landlord takes notice of the above described Deed of Trust and the subordinate and inferior lien provided for therein as described above to be imposed solely against Eagle's leasehold interest under the Ground Lease.
2. To the actual knowledge of Landlord there presently exists no default by Eagle under the Ground Lease.


3. The Ground Lease has not been modified, altered or amended to the best of the Landlord's actual knowledge, except as set forth in the copies of such modifications, alterations or amendments attached hereto.
4. Landlord will give to Bank, at the address of Bank specified in this letter or at such other address as Bank may hereafter designate in writing to Landlord, prompt written notice of any default by Eagle under the Ground Lease simultaneously with the giving of such notice to Eagle, and Bank shall have the right for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make such payment as may be necessary or appropriate to cure any such default so specified, it being the intention that Landlord shall not exercise Landlord's right to terminate the Ground Lease without first giving Bank the notice provided for herein and affording Bank the right to cure such default as provided for herein.
5. For the purpose of this letter, any notice to Bank may be delivered in person or shall be deemed to have been delivered, whether actually received or not, when deposited in United States mail, postage prepaid, registered certified mail, return receipt requested, addressed to Bank at the following address:

Hibernia National Bank
2300 West Eldorado Pkwy
McKinney, TX 75070

6. In the event Bank or third party (provided such third party is approved by Landlord in accordance with the terms of the Ground Lease for approval of an assignee) succeeds to the interest of Eagle in and to the Ground Lease by means of foreclosure under the Deed of Trust or of a transfer in lieu of such foreclosure due to the failure or inability of Eagle to pay the Loan secured by the Deed of Trust, Landlord shall thereafter accept, recognize and treat Bank or such approved third party, as the case may be, as the tenant under the Ground Lease. If Bank succeeds to the interest of Eagle as described in this paragraph 6, Bank may thereafter, with the written consent of the Landlord, which consent shall not be unreasonably withheld or delayed, assign its leasehold right, title, and interest in and to the Ground Lease. For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to withhold its consent when any one or more of the following apply:
 - (a) The proposed assignee is of a character or of a reputation or is engaged in a business that is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;
 - (b) The proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the tenant under the Ground Lease at the time when the consent is requested;
 - (c) The proposed assignee's intended use of the demised premises as defined in the Ground Lease is inconsistent with the Ground Lease;
 - (d) The proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Addison Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);

- (e) If at any time consent is requested or at any time prior to the granting of consent tenant is in default under the Ground Lease or would be in default under the Ground Lease but for the pendency of a grace or cure period; or
- (f) The proposed assignee does not intend to occupy the entire Demised Premises as described in the Ground Lease and conduct its business therefrom for a substantial portion of the then remaining term of the Ground Lease.
- (g) For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to delay its consent for a period of 45 days after the receipt by Landlord of all information requested by Landlord regarding or in connection with the proposed assignment and the proposed assignee.

Very Truly Yours,



Jerre Hutson
Hibernia National Bank a
National banking association

By: Jerre Hutson
Name: Jerre Hutson
Title: Vice President

Acknowledged the _____ day of December, 2004.

TOWN OF ADDISON, TEXAS

By: _____

Its: _____

Exhibit A

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

LEASEHOLD DEED OF TRUST

EAGLE LAND & CATTLE CO., a Texas corporation ("**Grantor**"), in order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Grantor hereinafter described, does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to FAY F. PAYSSSE, TRUSTEE ("**Trustee**") all of Grantor's estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in and under that certain Ground Lease dated September 4, 1980 (as amended and assigned, the "**Ground Lease**"), by and between the City of Addison, Texas, a municipal corporation (the same being the Town of Addison, Texas) (the "**City**"), as successor-in-interest to the City and Addison Airport of Texas, Inc., a Texas corporation, as lessor, and Grantor, as successor-in-interest to William R. White, as lessee, covering the land described in Exhibit A attached hereto and made a part hereof, together with all of Grantor's estate, right, title and interest, now owned or hereafter acquired, in (i) all the buildings and other improvements now on or that may be placed hereafter on such land during the existence of this lien; (ii) Grantor's rights and interests in all fixtures or other property now or hereafter attached to, installed in, or used in connection with the buildings and other improvements now erected or hereafter to be erected on such land; (iii) Grantor's rights and interests in all easements and rights of way used in connection with any of the foregoing property or as a means of ingress to or egress from such property; (iv) Grantor's rights and interests in any streets, ways, alleys and strips of land adjoining such land or any part thereof; (v) all the right, title and interest of Grantor in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases; all of the foregoing shall be referred to collectively herein as the "**Leases**") now or hereafter affecting such land, including, without limitation, all rents, issues, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment, all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Grantor may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding; and the leasehold estate in the event this Deed of Trust is on a leasehold; and (v) all rights, estates, powers and privileges appurtenant or incident to the foregoing.

TO HAVE AND TO HOLD the foregoing property, including, without limitation, the Ground Lease (herein called the "**Property**"), unto the Trustee and his successors or substitutes in this trust and to his or their successors and assigns, IN TRUST, however, upon the terms, provisions and conditions herein set forth.

ARTICLE 1 **Secured Indebtedness**

1.1 Secured Indebtedness. This Leasehold Deed of Trust (this "**Deed of Trust**") is made to secure and enforce the payment of the following note, obligations, indebtedness and liabilities: (a) one certain Promissory Note of even date herewith in the maximum principal

amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00), made by Grantor, and payable to the order of **HIBERNIA NATIONAL BANK**, a national banking association ("**Bank**"), with interest at the rate or rates therein provided, both principal and interest being payable as therein provided, and containing a provision for the payment of a reasonable additional amount as attorneys' fees, and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part (such note and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, are hereinafter collectively called the "**Note**," and the Bank and all subsequent holders of the Note or any part thereof or any interest therein or any of the "secured indebtedness" [as hereinafter defined] are hereinafter collectively called the "**Noteholder**"); and (b) all loans and future advances made by the Noteholder to Grantor and all other debts, obligations and liabilities of every kind and character of Grantor now or hereafter existing in favor of the Noteholder (including all indebtedness incurred or arising pursuant to the provisions of this Deed of Trust or any loan agreement relating to the above described indebtedness or any other instrument now or hereafter evidencing, governing or securing the above described indebtedness or any part thereof) whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to the Noteholder or to a third party and subsequently acquired by the Noteholder and whether such debts, obligations and liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Grantor may hereafter become indebted to the Noteholder in further sum or sums. The indebtedness referred to in this Paragraph is hereinafter sometimes called the "**secured indebtedness**" or the "**indebtedness secured hereby**."

ARTICLE 2

Representations, Warranties and Covenants

2.1 Title. Grantor hereby represents and warrants that Grantor has good, indefeasible and insurable title to, and a valid and enforceable leasehold estate in the land described in Exhibit A attached hereto and made a part hereof and the right to convey the leasehold estate under the Ground Lease and that the Ground Lease is in full force and effect without modification and without default on the part of either the lessor or lessee thereunder, and the right to convey the other Property, that the Property is unencumbered except for the Permitted Encumbrances (as hereinafter defined). Grantor shall warrant and forever defend the title to the Property against the claims of all persons whomsoever claiming or to claim the same or any part thereof, subject only to the encumbrances described in the mortgagee policy of title insurance issued to Noteholder insuring the lien of this Deed of Trust (the "**Permitted Encumbrances**").

2.2 Covenants and Agreements. So long as the secured indebtedness or any part thereof remains unpaid, Grantor covenants and agrees with the Noteholder as follows:

(a) Payment. Grantor shall make prompt payment, as the same becomes due, of the Note and of all installments of principal and interest thereon and of all other secured indebtedness without setoff, deduction or demand.

(b) Use of Property. Grantor shall use and keep the Property in a safe and proper manner and in accordance with all laws, ordinances and regulations of governmental bodies having jurisdiction over Grantor or the Property and all restrictive covenants included in the Permitted Encumbrances (collectively, "**Applicable Laws**") and shall pay all fees or charges of any kind in connection therewith. Grantor shall allow the Noteholder or its authorized representative to enter the Property at any reasonable time to inspect the Property. If Grantor

receives a notice or claim that the Property is not in compliance with any Applicable Law, Grantor shall promptly furnish a copy of such notice or claim to the Noteholder.

(c) Ad Valorem Taxes. Grantor shall cause to be paid prior to delinquency all taxes and assessments heretofore or hereafter levied or assessed against the Property, or any part thereof, or against the Trustee or the Noteholder for or on account of the Note or the interest created by this Deed of Trust and shall furnish the Noteholder with evidence of payment of such taxes and assessments at least ten (10) days prior to the applicable default date therefor.

(d) Repair and Maintenance. Grantor shall keep the Property in good order and repair, causing all necessary repairs, renewals and replacements to be promptly made, and shall not allow any of the Property to be misused, abused or wasted. Grantor shall promptly replace all worn-out fixtures covered by this Deed of Trust with fixtures comparable to the replaced fixtures when new, and shall repaint the Property when needed. Notwithstanding the foregoing, Grantor shall not, without the prior written consent of the Noteholder, make any structural alteration to the Property or any other alterations thereto which impair the value thereof.

(e) Insurance and Casualty. Grantor shall keep the Property insured against loss or damage by fire, explosion, windstorm, hail, tornado and such other hazards as are from time to time included in "all risks coverage" or as the Noteholder may require from time to time in an amount equal to one hundred percent (100%) of the full replacement value of all of the improvements on the Property under policies of fire, extended coverage and other insurance in such company or companies, in such amounts, upon such terms and provisions, and with such endorsements, all as is acceptable to the Noteholder. Grantor further agrees that Grantor shall deliver to the Noteholder certified copies of the original policies evidencing such insurance and evidence of the payment of all premiums, and shall deliver certificates evidencing renewals of all such policies of insurance to the Noteholder at least fifteen (15) days before any such insurance shall expire. Grantor further agrees that all such policies shall provide that proceeds thereunder will be payable to the Noteholder as its interest may appear (or to the Noteholder's designee) pursuant and subject to a mortgage clause (without contribution) of standard form attached to or otherwise made a part of the applicable policy. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Grantor in and to such policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or the Noteholder or other transferee in the event of such other transfer of title; and to that end Grantor hereby grants to the Noteholder a security interest in such policies and proceeds, which security interest shall be subject to foreclosure in accordance with procedures herein set out for the foreclosure of the lien of this Deed of Trust. In the event any of the Property covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail or by any other casualty against which insurance shall have been required hereunder, (i) the Noteholder may, but shall not be obligated to, make proof of loss if not made promptly by Grantor, (ii) each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Noteholder instead of to Grantor, and (iii) the Noteholder shall have the right to apply the insurance proceeds first, to reimburse the Noteholder or the Trustee for all reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such proceeds and, second, the remainder of the proceeds shall be applied, at the discretion of the Noteholder, in payment (without premium or penalty) of the secured indebtedness, either in whole or in part, in the order determined by the Noteholder, or to the repair, restoration or replacement of the Property so destroyed or damaged; provided that, any insurance proceeds held by the Noteholder to be applied to the repair, restoration or replacement

of the Property shall be paid out from time to time upon compliance by Grantor with such terms, conditions and requirements as may be reasonably imposed by the Noteholder. In any event the unpaid portion of the secured indebtedness shall remain in full force and effect and Grantor shall not be excused in the payment thereof. If any act or occurrence of any kind or nature (including any casualty on which insurance was not obtained or obtainable) shall result in any material damage to or loss or destruction of the Property, Grantor shall give immediate notice thereof by mail to the Noteholder and, unless otherwise so instructed by the Noteholder, shall promptly, at Grantor's sole cost and expense and regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction.

(f) Condemnation. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be paid to the Noteholder and shall be applied, first, to reimburse the Noteholder or the Trustee for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of such proceeds and, second, the remainder of the proceeds shall be applied, at the discretion of the Noteholder, to the payment of the secured indebtedness (without premium or penalty) in the order determined by the Noteholder or paid out to repair or restore the Property so affected by such condemnation, injury or damage in the same manner as provided in subparagraph 2.2(e). In any event the unpaid portion of the secured indebtedness shall remain in full force and effect and Grantor shall not be excused in the payment thereof. In the event any of the foregoing proceeds are applied to the repair, restoration or replacement of the Property, Grantor shall promptly commence and complete such repair, restoration or replacement of the Property as nearly as possible to its value, condition and character immediately prior to such damage or taking. Grantor hereby assigns and transfers all such proceeds, judgments, decrees and awards to the Noteholder for application as provided herein.

(g) Indemnification. Grantor shall indemnify and hold harmless the Trustee and the Noteholder from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with (i) any bodily injury or death or property damage occurring in or upon the Property through any cause whatsoever, (ii) any breach of this Deed of Trust by Grantor hereunder, or (iii) any violation by Grantor or the Property of Applicable Laws, including Applicable Laws pertaining to health or the environment. This indemnity will survive any foreclosure or termination of this Deed of Trust.

(h) Permitted Encumbrances. Grantor shall comply with and shall perform all of the covenants, agreements and obligations imposed upon it or the Property in the Permitted Encumbrances in accordance with their respective terms and provisions.

(i) Fees and Expenses. Grantor agrees to pay to Bank an commitment fee in connection with the loan evidenced by the Note in an amount equal to \$7,000.00, plus title insurance and examination charges, survey costs, hazard insurance premiums, filing and recording fees, attorneys' fees, appraisal and appraisal review fees, environmental engineer and review fees, recording fees and any other actual fees and/or expenses incurred by the Bank in connection with the consummation of the loan evidenced by the Note.

(j) Financial Reporting Requirements. Grantor will furnish to Noteholder, (i) within ninety (90) days after the close of Grantor's fiscal year, balance sheet and profit and

loss statements for the immediately preceding calendar year prepared in accordance with generally accepted accounting principles and practices consistently applied, and otherwise in form and substance satisfactory to Noteholder, (ii) within thirty (30) days after the close of each calendar month, an operating statement for the immediately preceding calendar month together with a complete rent roll and other supporting data reflecting all material information with respect to the operation of the Property during the period covered thereby, (iii) a copy of Grantor's income tax return within thirty (30) days after the date of filing of same, and (iv) all other financial information and reports that Noteholder may, from time to time, reasonably request. In addition, Grantor will cause each guarantor of the indebtedness secured by the Leasehold Deed of Trust to furnish to Noteholder (1) for individual guarantors, within thirty (30) days after the close of each calendar year, a personal statement of financial condition for the immediately preceding calendar year prepared in accordance with generally accepted accounting principles and practices consistently applied, and otherwise in form and substance satisfactory to Noteholder, (2) for entity guarantors, ninety (90) days after the close of such guarantor's fiscal year, an annual financial statement and profit and loss statements for the immediately preceding calendar year prepared in accordance with generally accepted accounting principles and practices consistently applied, and otherwise in form and substance satisfactory to Noteholder, (3) a copy of the income tax return of each guarantor of the indebtedness secured by the Leasehold Deed of Trust within thirty (30) days after the date of filing of same, and (4) all other financial information and reports that Noteholder may, from time to time, reasonably request from each guarantor of the indebtedness secured by the Leasehold Deed of Trust.

(k) Principal Transaction Account. So long as the secured indebtedness remains outstanding, Grantor shall maintain its principal transaction account for its business with Noteholder, or another financial institution designated by Noteholder in its sole discretion.

(l) Indebtedness; Loans. So long as the secured indebtedness remains outstanding, Grantor shall not, without the prior written consent of the Noteholder, (i) create or incur any indebtedness other than the secured indebtedness whatsoever unless same is from Noteholder, (ii) guarantee or become contingently liable with respect to any indebtedness other than the secured indebtedness, or (iii) make any loan(s) to any other person(s) and/or entity(ies).

(m) Grantor's Assets. So long as the secured indebtedness remains outstanding, Grantor shall not, without the prior written consent of the Noteholder, merge, consolidate, encumber and/or transfer any of its assets (or any portion thereof) whatsoever.

(n) Payments to Affiliates. So long as the secured indebtedness remains outstanding, Grantor shall not make and/or pay any payment(s), dividend(s) and/or loan(s) to any parties related to and/or affiliated with Grantor, without the prior written consent of Noteholder (in Noteholder's sole and absolute discretion).

(o) No Change in Entity. If Grantor is a corporation, partnership or other entity, so long as the secured indebtedness remains outstanding, Grantor shall not, without the prior written consent of the Noteholder, (i) permit or cause the person or persons who own a majority of either the outstanding voting rights or the outstanding ownership interests of Grantor as of the date of this Deed of Trust to cease to own a majority of such voting rights of ownership, or (ii) otherwise reorganize as any other form of legal entity.

(p) Ground Lease Covenants. Grantor (i) shall comply with the provisions of the Ground Lease, (ii) shall give immediate written notice to Noteholder of any default by lessor under the Ground Lease or of any notice received by Grantor from such lessor of any

default by Grantor under the Ground Lease (and Grantor shall deliver to Noteholder copies of each other type of notice received by Grantor from Landlord under the Ground Lease within ten (10) days after Grantor's receipt of each such notice), (iii) shall exercise any option to renew or extend the Ground Lease and give written confirmation thereof to Noteholder within thirty (30) days after such option becomes exercisable, (iv) shall give immediate written notice to Noteholder of the commencement of any remedial proceedings under the Ground Lease by any party thereto and, if required by Noteholder, shall permit Noteholder to control and act for Grantor as Grantor's attorney-in-fact in any such remedial proceedings and (v) shall within thirty (30) days after request by Noteholder (such request not to be made by Noteholder more than once per calendar year, unless there is a default hereunder), obtain from the lessor under the Ground Lease and deliver to Noteholder a lessor's estoppel certificate in form and substance acceptable to Noteholder. Grantor hereby expressly transfers and assigns to Noteholder the benefit of all covenants contained in the Ground Lease, whether or not such covenants run with the land, but Noteholder shall have no liability with respect to such covenants or any other covenants contained in the Ground Lease. There shall not be a merger of the Ground Lease, or of the leasehold estate created thereby, with the fee estate covered by the Ground Lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Noteholder shall consent in writing to such merger; if Grantor shall acquire such fee estate, then this Instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate. Furthermore, Grantor hereby covenants and agrees with Noteholder as follows with respect to the Ground Lease: (A) as long as the secured indebtedness remains outstanding, Grantor shall neither surrender the leasehold estate or interests herein conveyed nor terminate or cancel the Ground Lease creating said estate and interests, and Grantor shall not, without the express written consent of Noteholder, amend, modify or terminate the Ground Lease; (B) Grantor shall perform all of its obligations under the Ground Lease within the time periods required thereunder; (C) Noteholder shall have the right (but not the obligation) to cure any alleged default by Grantor under the Ground Lease, and any amounts expended by Noteholder to perform any of Grantor's obligations under the Ground Lease, with interest thereon, shall become part of the secured indebtedness and be payable pursuant to the terms of Section 2.3 below; (D) Grantor hereby indemnifies Noteholder and agrees to hold and defend Noteholder harmless from and against any and all actions, claims, damages, demands, liabilities, losses, costs or expenses suffered or incurred by Noteholder under or in connection with the Ground Lease; and (E) Grantor hereby appoints Noteholder as Grantor's agent and attorney-in-fact with full power and authority to, during an event of default hereunder, take any and all actions and to make any elections and exercise any rights which Grantor would otherwise be entitled to take, make or exercise pursuant to the Ground Lease (and the foregoing election is coupled with an interest and shall be irrevocable as long as the secured indebtedness, or any part thereof, remains outstanding).

(q) Lease Covenants. As used in this Deed of Trust, the word "Lease" shall include subleases if this instrument is on a leasehold. Grantor shall comply with and observe Grantor's obligations as landlord under all Leases of the Property or any part thereof. All Leases now or hereafter entered into will be in form and substance subject to the approval of Noteholder. All Leases of the Property (including, without limitation, those previously entered into and currently affecting the Property) shall specifically provide that such Leases are subordinate to this Instrument; that the tenant attorns to Noteholder, such attornment to be effective upon Noteholder's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Noteholder may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Noteholder may, at Noteholder's option, accept or reject such attornments. Grantor shall not, without Noteholder's written consent, request or consent to the subordination of any Lease of all or any part of the Property to any lien

subordinate to this Instrument. If Grantor becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Grantor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) immediately notify Noteholder thereof in writing and of the amount of said set-offs, and (c) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such setoff and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction. Upon Noteholder's receipt of notice of the occurrence of any default or violation by Grantor of any of its obligations under the Leases, Noteholder shall have the immediate right, but not the duty or obligation, without prior written notice to Grantor or to any third party, to enter upon the Property and to take such actions as Noteholder may deem necessary to cure any default or violation by Grantor under the Leases. The costs incurred by Noteholder in taking any such actions pursuant to this paragraph, with interest thereon, shall become part of the secured indebtedness and be payable pursuant to the terms of Section 2.3 below. Noteholder shall have no liability to Grantor or to any third party for any actions taken by Noteholder or not taken pursuant to this paragraph.

2.3 Right of the Noteholder to Perform. Grantor agrees that, if Grantor fails to perform any act or to take any action which hereunder Grantor is required to perform or take, or to pay any money which hereunder Grantor is required to pay, or takes any action prohibited hereby, the Noteholder may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money or remedy any action so taken (including, without limitation, the exercise of any option to renew or extend the Ground Lease on behalf of Grantor and the curing of any default of Grantor in the terms and conditions of the Ground Lease), and any expenses so incurred by the Noteholder, and any money paid by the Noteholder in connection therewith, shall be a demand obligation owing by Grantor to the Noteholder and the Noteholder, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts due and owing by Grantor to the Noteholder pursuant to this Deed of Trust shall bear interest from the date such amount becomes due until paid at the Maximum Rate (as defined in the Note), or, at Noteholder's sole option, the rate of interest payable on matured but unpaid principal of or interest on the Note, and shall be a part of the secured indebtedness and shall be secured by this Deed of Trust.

ARTICLE 3 Remedies in Event of Default

3.1 Defaults. The term "**default**" as used in this Deed of Trust shall mean the occurrence of any of the following events:

(a) the failure of Grantor to make due and punctual payment of the Note or of any other secured indebtedness or of any installment of principal thereof or interest thereon, or of any other amount required to be paid under the Note or this Deed of Trust, as the same shall become due and payable, whether at maturity or when accelerated pursuant to any power to accelerate contained in the Note or contained herein; or

(b) the failure of Grantor timely and properly to observe, keep or perform any covenant, agreement, warranty or condition herein required to be observed, kept or performed (except a failure described in any other subparagraph of this Paragraph 3.1, including subparagraph 3.1(a)), if such failure continues for twenty (20) days after Grantor is notified thereof; or

(c) without the prior written consent of the Noteholder, Grantor sells, leases,

exchanges, assigns, transfers, conveys or otherwise disposes of all or any part of the Property or any interest therein (except for (i) the disposition of worn-out fixtures under the circumstances described in subparagraph 2.2(d) hereof, or (ii) the leasing of the Property (or any portion thereof) in the ordinary course of business and in accordance with the terms of this Deed of Trust, including, without limitation, Section 2.2(q) above), or legal or equitable title to the Property, or any interest therein, is vested in any other party, in any manner whatsoever, by operation of law or otherwise, it being understood that the consent of the Noteholder required hereunder may be refused by the Noteholder in its sole discretion or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole discretion of the Noteholder, including but not limited to the right to change the interest rate, date of maturity or payments of principal or interest on the Note, to require payment of any amount as additional consideration as a transfer fee or otherwise and to require assumption of the Note and this Deed of Trust; or

(d) without the prior written consent of the Noteholder, Grantor creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien created in this Deed of Trust; or

(e) the Property is so demolished, destroyed or damaged that, in the judgment of the Noteholder, it cannot be restored or rebuilt with available funds within a reasonable period of time; or

(f) a default occurs under any other agreements or instruments evidencing or relating to the secured indebtedness; or

(g) the incapacity, death, disability, dissolution or termination (as applicable) of Grantor and/or any guarantor of the secured indebtedness (including, without limitation, the failure of any such party which is an entity to maintain its existence and authority to do business in the jurisdiction where the Property is located); or

(h) the Ground Lease is terminated or not renewed for any reason, or if Grantor defaults in its obligations under the Ground Lease (and such default(s) remain(s) uncured beyond any applicable notice, grace or cure period expressly set forth in the Ground Lease), or if the Ground Lease is amended or modified without the prior written consent of Noteholder.

3.2 Acceleration. Upon the occurrence of a default, the Noteholder shall have the option of declaring all secured indebtedness in its entirety to be immediately due and payable, and the liens and security interests created hereby shall be subject to foreclosure in any manner provided for herein or provided for by law as the Noteholder may elect.

3.3 Foreclosure. Upon the occurrence of a default, the Trustee, his successor or substitute, is authorized and empowered and it shall be his special duty at the request of the Noteholder to sell the Property or any part thereof situated in the State of Texas at the courthouse of any county in the State of Texas in which any part of the Property is situated, at public venue to the highest bidder for cash between the hours of 10 o'clock a.m. and 4 o'clock p.m. on the first Tuesday in any month after having given notice of such sale in accordance with the statutes of the State of Texas then in force governing sales of real estate under powers conferred by deed of

trust. Any sale made by the Trustee hereunder may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. After any such sale, the Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Grantor, conveying the property so sold to the purchaser or purchasers in fee simple with general warranty of title, and shall receive the proceeds of the sale or sales and apply the same as herein provided. Payment of the purchase price to the Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. In the event any sale hereunder is not completed or is defective in the opinion of the Noteholder, such sale shall not exhaust the power of sale hereunder and the Noteholder shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds given by the Trustee or any successor or substitute appointed hereunder as to nonpayment of the indebtedness secured hereby, or as to the occurrence of any default, or as to the Noteholder having declared all of such indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to act of the Trustee or any substitute or successor, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by the Noteholder or by such Trustee, substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. The Trustee, his successor or substitute, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of the Trustee, his successor or substitute.

3.4 Proceeds of Sale. The proceeds of any sale held by the Trustee or in foreclosure of the lien evidenced hereby shall be applied:

FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to a reasonable fee to the Trustee acting under the provisions of Paragraph 3.3;

SECOND, to the payment in full of the secured indebtedness (including specifically without limitation the principal, interest and attorneys' fees due and unpaid on the Note and the amounts due and unpaid and owed to the Noteholder under this Deed of Trust) in such order as the Noteholder may elect; and

THIRD, the remainder, if any there shall be, shall be paid to Grantor or to such other party or parties as may be entitled thereto by law.

3.5 The Noteholder as Purchaser. The Noteholder shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and any Noteholder purchasing at any such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the secured indebtedness owing to such Noteholder.

3.6 Remedies Cumulative. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the secured indebtedness, or any part thereof, or otherwise benefitting the Noteholder.

3.7 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale Grantor or Grantor's heirs, devisees, representatives,

successors or assigns or any other persons claiming any interest in the Property by, through or under Grantor are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of such property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of such property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated.

ARTICLE 4 **Miscellaneous**

4.1 Defeasance. If all of the secured indebtedness be paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in this Deed of Trust are kept and performed, then and in that event only, all rights under this Deed of Trust shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by the Noteholder in due form at Grantor's cost.

4.2 Successor Trustee. The Trustee may resign by an instrument in writing addressed to the Noteholder, or the Trustee may be removed at any time with or without cause by an instrument in writing executed by the Noteholder. In case of the death, resignation, removal or disqualification of the Trustee or if for any reason the Noteholder shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then the Noteholder shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by the Noteholder and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness secured hereby has been paid in full or until the Property is sold hereunder. Upon the making of any such appointment and designation, all of the estate and title of the Trustee in the Property shall vest in the named successor or substitute trustee and he shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee. All references herein to the Trustee shall be deemed to refer to the Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

4.3 Liability of Trustee. **THE TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY THE TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING THE TRUSTEE'S NEGLIGENCE), EXCEPT FOR THE TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee shall be under no liability for interest on any moneys received by him hereunder.

4.4 Waiver by the Noteholder. The Noteholder may at any time and from time to time (a) waive or not enforce compliance by Grantor with any covenant herein made by Grantor;

(b) consent to Grantor doing any act which hereunder Grantor is prohibited from doing, or consent to Grantor failing to do any act which hereunder Grantor is required to do; (c) release any part of the Property, or any interest therein, from the lien of this Deed of Trust without the joinder of the Trustee, or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other instrument now or hereafter securing the payment of the secured indebtedness, without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of the Noteholder hereunder except to the extent specifically agreed to by the Noteholder in writing.

4.5 Actions by the Noteholder. The lien and other security rights of the Noteholder hereunder shall not be impaired by any indulgence, moratorium or release granted by the Noteholder, including but not limited to (a) any renewal, extension, increase or modification which the Noteholder may grant with respect to any secured indebtedness, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which the Noteholder may grant in respect of the Property, or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness.

4.6 Rights of the Noteholder. The Noteholder may waive any default without waiving any other prior or subsequent default. The Noteholder may remedy any default without waiving the default remedied. Neither the failure by the Noteholder to exercise, nor the delay by the Noteholder in exercising, any right, power or remedy upon any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by the Noteholder and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. Acceptance by the Noteholder of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

4.7 Dealing with Successor. In the event the ownership of the Property or any part thereof becomes vested in a person other than Grantor, the Noteholder may deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness secured hereby in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the indebtedness secured hereby. No sale of the Property, no forbearance on the part of the Noteholder and no extension of the time for the payment of the indebtedness secured hereby given by the Noteholder shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Grantor hereunder or for the payment of the indebtedness secured hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby, except as agreed to in writing by the Noteholder.

4.8 Place of Payment. The Note and all other secured indebtedness which may be owing hereunder at any time by Grantor shall be payable at the place designated in the Note.

4.9 Notice. Any notice, request, demand or other communication required or permitted hereunder, or under the Note, or under any other instrument securing the payment of

the Note (unless otherwise expressly provided therein) shall be given in writing by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) prepaid telegram, telex or telecopy, sent to the intended addressee at the address shown on the signature page of this Deed of Trust, or to such different address as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of telegram, telex or telecopy, upon receipt; provided that, service of a notice required by Tex. Property Code § 51.002 shall be considered complete when the requirements of that statute are met.

4.10 Application of Indebtedness. If any part of the secured indebtedness is not, for any reason, lawfully secured by this Deed of Trust, then the Noteholder may without notice to Grantor apply payments made on the secured indebtedness first in discharge of the part not secured by this Deed of Trust. If for any reason any part of the secured indebtedness is not lawfully secured by the entire Property, then the Noteholder may without notice to Grantor apply payments made on the secured indebtedness first in discharge of that part. If the Noteholder has full recourse against Grantor or any guarantor for part, but not all, of the secured indebtedness for any reason, then the Noteholder may without notice to Grantor apply foreclosure proceeds which are to be applied to the secured indebtedness first against that portion of the secured indebtedness for which the Noteholder does not have full recourse against Grantor or the guarantor. Similarly, the Noteholder may without notice to Grantor apply any cash payments actually paid by Grantor or any guarantor before final maturity of the Note (by acceleration or otherwise) to the portion of the secured indebtedness for which the Noteholder does not have full recourse against Grantor or the guarantor.

4.11 Heirs, Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor including all successors in interest of Grantor in and to all or any part of the Property, and shall inure to the benefit of the Trustee and the Noteholder and their respective heirs, successors, substitutes and assigns and shall constitute covenants running with the land. All references in this Deed of Trust to Grantor, Trustee or the Noteholder shall be deemed to include all such heirs, devisees, representatives, successors, substitutes and assigns.

4.12 Severability. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Deed of Trust to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

4.13 Gender and Number. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

4.14 Counterparts. This Deed of Trust may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

4.15 Joint and Several. Where two or more persons or entities have executed this

Deed of Trust, unless the context clearly indicates otherwise, the term “Grantor” as used in this Deed of Trust means the grantors hereunder or either or any of them and the obligations of Grantor hereunder shall be joint and several.

4.16 Modification or Termination. Subject to Paragraph 4.7 above, the Note and this Deed of Trust may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted, and any alleged modification or termination which is not so documented shall not be effective as to any party.

4.17 Filing and Recordation. Grantor shall cause this Deed of Trust and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as the Trustee or the Noteholder shall reasonable request, and shall pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

4.18. Waiver by Grantor. In the event an interest in any of the Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Grantor agrees as follows: notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantor agrees that Lender shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the note and the amount for which the Property was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Property Code which would otherwise permit Grantor, any guarantor and any other persons against whom recovery of deficiencies is sought to independently (even absent the initiation of deficiency proceedings against them) present competent evidence of the fair market value of the Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Grantor, any guarantor, and any others against whom recovery of a deficiency is sought.

4.19 ENTIRE AGREEMENT. **THE NOTE, THIS DEED OF TRUST AND OTHER DOCUMENTS EXECUTED BY GRANTOR AND THE NOTEHOLDER AND DELIVERED IN CONNECTION THEREWITH REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

ARTICLE 5

Assignment of Rents

5.1 Assignment. To provide a source of future payment of the secured indebtedness, Grantor does hereby absolutely and unconditionally assign, transfer and set over to the Noteholder all of the rents, income, receipts, revenues, issues, profits and other sums of money (collectively, “Rent”) that are now or at any time hereafter become due and payable to Grantor under the terms of any Leases now or hereafter covering the Property, or any part of the Property, or arising or issuing from or out of the Leases or from or out of the Property. Rents covered by

this assignment will include but not be limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, security deposits, advance rents, all proceeds payable under any policy of insurance covering the loss of rents. Rents covered by this assignment shall also include any money Grantor is entitled to recover from any lessee in bankruptcy such as, without limitation, money recoverable for use and occupancy of any part of the Property and damage claims arising out of lease defaults, including rejections, under any applicable bankruptcy law. This assignment shall include, without limitation, the immediate and continuing right to collect and receive Rent. Until receipt from the Noteholder of notice of the occurrence of a default specified in this Deed of Trust (a "**Notice of Default**"), each lessee under the Leases may pay Rent directly to Grantor and Grantor shall have the right to receive such Rent provided that Grantor shall hold such Rent as a trust fund to be applied as required by the Noteholder, and Grantor agrees so to apply Rent, before using any part of the same for any other purposes, first, to the payment of taxes and assessments upon the Property before penalty or interest is due thereon; second, to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust; third, to the satisfaction of all obligations specifically set forth in the Leases; and, fourth, to the payment of interest and principal becoming due on the Note and this Deed of Trust. Upon receipt from the Noteholder of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to the Noteholder all Rent thereafter accruing and the receipt of Rent by the Noteholder shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rent directly to the Noteholder and each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Grantor for any Rent paid to the Noteholder after receipt of the Notice of Default. Rent received by the Noteholder for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of foreclosure shall be applied by the Noteholder to the payment (in such order as the Noteholder shall determine) of: (a) all expenses of managing the Property, including but not limited to the salaries, fees and wages of a managing agent and such other employees as the Noteholder may deem necessary or desirable; all expenses of operating and maintaining the Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; and all expenses incident to taking and retaining possession of the Property or collecting Rent due and payable under the Leases; and (b) the Note and other indebtedness secured by this Deed of Trust, principal, interest, attorneys' and collection fees and other amounts, in such order as the Noteholder in its sole discretion may determine. In no event will the assignment pursuant to this Paragraph 5.1 reduce the indebtedness evidenced by the Note or otherwise secured by this Deed of Trust, except to the extent, if any, that Rent is actually received by the Noteholder and applied upon or after receipt to such indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, the Noteholder may, at its option, at any time and from time to time, release to Grantor any Rent received by the Noteholder. As between Grantor and the Noteholder, and any person claiming through or under Grantor, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Paragraph 5.1, the assignment contained in this Paragraph is intended to be absolute, unconditional and presently effective and the provisions of this Paragraph for notification of lessees under the Leases upon the occurrence of a default specified in this Deed of Trust are intended solely for the benefit of each such lessee and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a lessee who has not received such notice. It shall never be necessary for the Noteholder to institute legal proceedings of any kind whatsoever to enforce the provisions of this Paragraph 5.1. At any time during which Grantor is receiving Rent directly from lessees under the Leases, Grantor shall, upon receipt of written direction from the Noteholder, make demand and sue for all Rent due and payable under one or more Leases, as directed by the Noteholder, as it becomes due and payable, including Rent which

is past due and unpaid. In the event Grantor fails to take such action, or at any time during which Grantor is not receiving Rent directly from lessees under the Leases, the Noteholder shall have the right (but shall be under no duty) to demand, collect and sue for in its own name all Rent due and payable under the Leases, as it becomes due and payable, including Rent which is past due and unpaid. The Noteholder shall not be deemed to have taken possession of the Property except on the exercise of any option the Noteholder may have to do so, evidenced by its demand and overt act for such purpose. Grantor shall make no assignment or other disposition of Rent, nor shall Grantor cancel or amend any Lease or any other instrument under which Rent is to be paid or waive, excuse, condone, discount, set off, compromise or in any manner release any obligation thereunder, nor shall Grantor receive or collect any Rent for a period of more than one month in advance of the date on which payment thereof is due and Grantor shall duly and punctually observe and perform every obligation to be performed by it under each Lease, and shall not do or permit to be done anything to impair the security thereof and shall enforce, to the extent such enforcement would be reasonably prudent under the circumstances, every obligation of each other party thereto. The assignment contained in this Paragraph 5.1 shall become null and void upon the release of this Deed of Trust.

ARTICLE 6

Security Interest

6.1 Grant of Interest. In order to secure the payment of the indebtedness hereinabove referred to and the performance of the obligations, covenants, agreements and undertakings of Grantor hereinabove described, Grantor hereby grants to the Noteholder a security interest in each of the following now or hereafter owned by Grantor (the “**Collateral**”) and all proceeds of the Collateral:

(a) all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature now or hereafter attached or affixed to or used in and about the buildings or other improvements now erected or hereafter to be erected on the land described in Exhibit A attached hereto, or otherwise located on such land, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing;

(b) all building materials and equipment now or hereafter delivered to the Property and intended to be installed therein;

(c) all security deposits and advance rentals under lease agreements now or at any time hereafter covering or affecting any of the Property or any Collateral and held by or for the benefit of Grantor;

(d) all monetary deposits which Grantor has been required to give to any public or private utility with respect to utility services furnished to the Property;

(e) all issues and profits from any part of the Property or any Collateral;

(f) all proceeds (including premium refunds) of each policy of insurance relating to the Property or any Collateral;

(g) all proceeds from the taking of the Property or any Collateral or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof;

(h) all contracts related to the Property or any Collateral;

(i) all money, funds, accounts, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or related to the Property or any Collateral, including any funds deposited or set aside for the payment of taxes or insurance premiums related to the Property or any Collateral;

(j) all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property or any Collateral,

(k) all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Property or any Collateral;

(l) all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property or any Collateral; and

(m) all oil, gas and other hydrocarbons and other minerals produced from or allocated to the Property and all products processed or obtained therefrom, the proceeds thereof, and all accounts and general intangibles under which such proceeds may arise, together with any sums of money that may now or at any time hereafter become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mining leases covering the Property or any part thereof.

6.2 Uniform Commercial Code. Upon the occurrence of a default, the Noteholder may exercise its rights of enforcement with respect to the Collateral under the Texas Business and Commerce Code, as amended, and in conjunction with, in addition to or in substitution for those rights and remedies:

(a) the Noteholder may enter upon the Property to take possession of, assemble and collect the Collateral or to render it unusable; and

(b) the Noteholder may require Grantor to assemble the Collateral and make it available at a place the Noteholder designates which is mutually convenient to allow the Noteholder to take possession or dispose of the Collateral; and

(c) written notice mailed to Grantor as provided herein five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(d) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Property under power of sale; and

(e) in the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Collateral and the Property may, at the option of the Noteholder, be sold as a whole; and

(f) it shall not be necessary that the Noteholder take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(g) prior to application of proceeds of disposition of the Collateral to the secured indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by the Noteholder; and

(h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness or as to the occurrence of any default, or as to the Noteholder having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by the Noteholder, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(i) the Noteholder may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Noteholder, including the sending of notices and the conduct of the sale, but in the name and on behalf of the Noteholder.

6.3 Reproduction as Financing Statement. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement.

6.4 Fixture Filing. This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records in the Office of the County Clerk where the Property (including such fixtures) is situated. The mailing address of Grantor is set forth below opposite the signature of Grantor to this Deed of Trust and the address of the Noteholder from which information concerning the security interest may be obtained is the address of the Noteholder set forth at the end of this Deed of Trust.

6.5 Filing and Recordation. Grantor shall cause this Deed of Trust and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as the Trustee or the Noteholder shall reasonably request, and shall pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

6.6 Financing Statement Filings. Grantor authorizes Noteholder to file any financing statements it deems necessary relating to the Collateral, including an "all asset," "super generic" filing or otherwise.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, this instrument is executed by the undersigned effective as of December ____, 2004.

Grantor's Address:

16151 Addison Road
Addison, Texas 75248

GRANTOR:

EAGLE LAND & CATTLE CO.,
a Texas corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of December, 2004, by _____, _____ of EAGLE LAND & CATTLE CO., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

Printed Name: _____

After Recording Return to:

DAVID, GOODMAN & MADOLE
Two Lincoln Centre
5420 LBJ Freeway, Suite 1200
Dallas, Texas 75240
Attention: Christopher I. Clark, Esq.

EXHIBIT A

LEGAL DESCRIPTION

(attached following this page)

161510v1

EXHIBIT 4

Ground Lease Agreement as Amended and Modified
As of this Request

THE STATE OF TEXAS
COUNTY OF DALLAS

GROUND LEASE

DEED RECORD

This Ground Lease (hereinafter referred to as the "Lease") is made and entered into as of September 4, 19 80, by and among the City of Addison, Texas, a municipal corporation (hereinafter sometimes referred to as the "City"), Addison Airport of Texas, Inc., a Texas Corporation (hereinafter sometimes referred to as "AATI") and William R. White (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, AATI leases that certain real property (hereinafter referred to as the "demised premises") described in attached Exhibit A from the City pursuant to that certain instrument captioned Agreement for Operation of the Addison Airport (hereinafter referred to as the "Base Lease") between the City and Addison Airport, Inc. (predecessor at AATI); and

WHEREAS, the demised premises are situated at Addison Airport (hereinafter referred to as the "Airport") in Dallas County, Texas, the Airport being delineated in a plat attached hereto as Exhibit B; and

WHEREAS, the City and AATI hereby lease and demise the demised premises to Tenant, and Tenant hereby leases and takes the demised premises from the City and AATI, upon the terms and conditions set forth herein;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

1. **Base Lease:** All of the terms and conditions of the Base Lease are incorporated into this Lease by reference as if written verbatim herein, and Tenant by Tenant's execution hereof acknowledges that AATI has furnished Tenant with a copy of the Base Lease. Tenant agrees to fully comply at all times and in all respects with the terms and conditions of the Base Lease insofar as the same relate to the demised premises and/or the use and operation thereof, except that Tenant shall not be responsible for the payment of any rental due under the Base Lease which shall be paid by AATI.

2. **Definition of Landlord and Effect of Default under the Base Lease:** The term "Landlord" as hereinafter used in this Lease shall mean either AATI or the City. So long as the Base Lease is in effect, AATI shall be entitled to all of the rights, benefits and remedies of the Landlord under this Lease, and shall perform all of the duties, covenants and obligations of the Landlord under this Lease. Upon the expiration or termination of the Base Lease, the City shall be entitled to all of the rights, benefits and remedies of the Landlord under this Lease, and shall perform all of the duties, covenants and obligations of the Landlord under this Lease. The City agrees that (i) until such time as the City notifies Tenant to the contrary in writing, Tenant is fully authorized to make all payments due under this Lease to AATI, and (ii) that default by AATI under the Base Lease shall have no effect on this Lease so long as Tenant pays and performs its duties, covenants and obligations under this Lease.

3. **Term:** The term hereof shall commence on the earlier of June 30, 1980, or the first day of the first calendar month after Tenant completes the construction hereinafter described and opens for business at the demised premises (the applicable date being hereinafter referred to as the "Commencement Date"), and shall end four hundred eighty (480) months thereafter; provided, however, that any entry upon the demised premises by Tenant prior to the Commencement Date shall be subject to all of the terms and conditions hereof except that rental shall not accrue.

4. **Rental:** Subject to adjustment as hereinbelow provided, Tenant agrees to pay to Landlord, without offset or deduction, rent for the demised premises at the rate of FIVE HUNDRED EIGHTY AND 76/100 (\$580.76) per month in advance. The first of such monthly installment shall be due and payable on or before the Commencement Date, and a like installment shall be due and payable on or before the first day of each calendar month thereafter during the term hereof.

5. **Adjustment of Rental:** Commencing on the second anniversary of the Commencement Date and on every bi-annual anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the monthly rental due under paragraph 4 shall be adjusted as follows:

(i) A comparison shall be made between the Consumers' price Index-All Items for the Dallas, Texas Metropolitan Area (hereinafter referred to as the "Price Index") as it existed on the Commencement Date and as it exists on the first day of the calendar month preceding the then applicable Adjustment Date.

(ii) The monthly rental for the two (2) year period beginning with and following the then applicable Adjustment Date shall be either increased or decreased, as the case may be, by the percentage of increase or decrease in the Price Index between the Commencement Date and the then applicable Adjustment Date, but in no event shall such monthly rental ever be decreased below the monthly rental set forth in paragraph 4.

(iii) In the event that the Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Price Index as closely as feasible shall be substituted therefor.

6. **Use of Demised Premises and Construction of Improvements.** The demised premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair; aircraft storage; aircraft training; aircraft charter; and aircraft rentals; and not otherwise without the prior written consent of Landlord.

In connection with such use and occupancy, Tenant intends to construct upon the demised premises the improvements depicted in the plans and specifications.

1-metal hangar 100'X 106' 7" with office and ramp.
Per Antlers Construction, Inc. drawing dated 7-23-80
and revised 8-26-80.

COUNTY CLERK'S MEMO
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DOCUMENT NOT
REPRODUCIBLE
WHEN RECORDED

All construction shall be strictly in accordance with such plans and specifications, and such construction shall be performed in a first class, workmanlike manner. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection with such construction.

7. **Acceptance of Demised Premises.** Tenant acknowledges that Tenant has fully inspected the demised premises and accepts the demised premises as suitable for the purpose for which the same are leased in their present condition.

8. **Securing Governmental Approvals and Compliance with Law.** Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the demised premises. Tenant shall comply at all times with all governmental laws, ordinances and regulations applicable to the use of the demised premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the demised premises, all at Tenant's sole cost and expense.

9. **Assignment, Subletting and Mortgaging of Leasehold Estate:**

A. Without the prior written consent of Landlord, Tenant may not assign this Lease or any rights of Tenant hereunder (except to a leasehold mortgagee as hereinbelow provided) or sublet the whole or any part of the demised premises. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of paragraph 6 pertaining to the use of the demised premises. In the event of any assignment or subletting, Tenant shall not assign Tenant's rights hereunder or sublet the demised premises without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to be bound by the terms and provisions of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the demised premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of obtaining funds for the construction of the improvements described in paragraph 6 or for other construction upon the demised premises approved from time to time by Landlord in writing. In the event that Tenant pursuant to mortgages or deeds of trust mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee become the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rental due hereunder and otherwise fully perform the terms and conditions of this Lease.

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C. All mortgages or deeds of trust whereby Tenant mortgages the leasehold estate of Tenant created hereby shall contain provisions (i) requiring the leasehold mortgagee to give Landlord fifteen (15) days written notice prior to accelerating the debt of Tenant to such mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust, (ii) allowing Landlord during such fifteen (15) day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Landlord's option to assume Tenant's position under said mortgages or deeds of trust.

D. Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a leasehold mortgage and written notice to such effect has been given to Landlord, to give the holder of such leasehold mortgagee at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.

E. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee and its successors and assigns after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee or its successors and assigns performs all of the obligations of Tenant hereunder. Landlord also agrees to execute and deliver to such proposed leasehold mortgagee any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the demised premises to the mortgage of such proposed leasehold mortgagee.

10. **Property Taxes and Assessments:** Tenant shall pay any and all property taxes or assessments levied or assessed on the improvements on the demised premises, the personal property and fixtures on the demised premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord's "paid receipts" or other written evidence that all such taxes have been paid by Tenant.

11. **Maintenance and Repair of Demised Premises:**

A. Tenant shall, throughout the term hereof, maintain in good repair and condition all the demised premises and all fixtures, equipment and personal property on the demised premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the demised premises clean and free of trash and in good repair and condition, with all fixtures and equipment situated in the demised premises in working order, reasonable wear and tear excepted.

B. In the event Tenant shall fail to so maintain the demised premises and the fixtures, equipment and personal property situated thereon, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made and the reasonable costs therefor expended by Landlord plus interest thereon as provided in paragraph 37 shall be paid by Tenant on demand.

12. **Alterations, Additions and Improvement.** After completion of the improvements described in paragraph 6, Tenant shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the demised premises without the prior written consent of Landlord. Consent for non-structural alterations, additions or improvements shall not be unreasonably withheld by Landlord. Tenant shall have the right to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures, provided that Tenant complies with all applicable governmental laws, ordinances and regulations.

All alterations, additions and improvements in and to the demised premises shall be performed in a first class, workmanlike manner, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection therewith.

13. **Insurance.** Tenant shall during the term hereof maintain at Tenant's sole cost and expense insurance relating to the demised premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than eighty percent (80%) of the full insurable value of the demised premises. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, therefore, proper adjustment in the limits of insurance coverage shall be effected.

(ii) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the demised premises, such insurance to afford protection to Landlord of not less than \$500,000.00 with respect to any one person, \$1,000,000.00 with respect to any one accident and not less than \$200,000.00 with respect to property damage.

(iii) Workmen's compensation insurance covering all persons employed by Tenant in connection with any work done on or about the demised premises with respect to which claims for death or bodily injury could be asserted against Landlord or the demised premises, or in lieu of such workmen's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency of the State of Texas.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$100,000.00 for damage to property resulting from such perils.

(v) Such other insurance on improvements in such amounts and against such other insurable hazard which at the time are commonly obtained in the case of property similar to such improvements.

(vi) Hangar keeper's liability insurance providing for coverage in the following limits: \$200,000.00 per aircraft and \$400,000.00 per occurrence on property damage to aircraft in the care, custody or control of Tenant.

(vii) During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement.

All such policies of insurance (i) shall be issued by insurance companies acceptable to Landlord, (ii) shall name Landlord as an additional insured or loss payee, as the case may be, and (iii) shall provide for at least ten (10) days written notice to Landlord prior to cancellation or modification. Tenant shall provide Landlord with duplicate originals of all insurance policies required by this paragraph.

14. **Casualty Damage or Destruction:**

A. In case of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.

B. In case of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly commence and complete the restoration, repair and replacement of said buildings, structures and equipment as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration").

C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the demised premises shall be held by Landlord. Landlord shall be protected in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon, and Landlord shall be under no duty to take any action other than as set forth in this paragraph 14.

D. Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses) shall be applied as follows:

(i) Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.

(ii) Upon receipt by Landlord of evidence of the character required by the foregoing clauses (i)(a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialmen's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.

F. In the event that Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same, Landlord shall have the right to commence or complete Restoration after Landlord has given Tenant thirty (30) days prior written notice requesting the commencement of Restoration or that Tenant diligently proceed to the completion of same if Tenant during such thirty (30) day period does not so commence or proceed to diligently complete Restoration. In such event, Landlord shall retain the insurance proceeds, and Tenant shall pay any deficiency if such proceeds are not sufficient for Restoration.

15. Condemnation:

A. If during the term hereof, any part of the demised premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the demised premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the date that said condemning authority takes possession of the demised premises, and Landlord shall refund to Tenant any prepaid but unaccrued rental less any sum then owing by Tenant to Landlord.

B. If after such taking by or sale to said condemning authority the remainder of the demised premises is susceptible to efficient and economic occupation and operation by Tenant, this Lease shall not terminate but the rental due hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term hereof the sum obtained by multiplying each monthly rental installment due hereunder, as adjusted from time to time pursuant to paragraph 5, by a fraction, the numerator of which shall be the number of square feet remaining in the demised premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the demised premises. The rental adjustment called for herein shall not commence until said condemning authority actually takes possession of the condemned portion of the demised premises.

C. If this Lease is not terminated pursuant to Section A, Tenant shall promptly restore the improvements on the demised premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the demised premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant, as their interest may appear. If this Lease is terminated pursuant to Section A, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

16. Utilities. Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the demised premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees and services furnished to the demised premises during the term hereof. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

17. Common Facilities. Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the demised premises, other airport installations, and all other reasonable services which may be provided without charge from time to time by Landlord in operating the Airport. All such common facilities shall at all times be under the exclusive control and management of Landlord and may be rearranged, modified, changed or terminated from time to time at Landlord's sole discretion.

18. Rules and Regulations. Landlord has adopted Rules and Regulations (hereinafter referred to as the "Rules and Regulations") which shall govern Tenant in the use of the demised premises and all common facilities, a copy of which has been furnished to Tenant. The Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with the Rules and Regulations. Landlord shall have the right to amend, notify and alter the Rules and Regulations from time to time in a reasonable manner for the purpose of assuring the safety, welfare and convenience of Landlord, Tenant and all other Tenants and customers of the Airport.

19. Signs and Equipment. After first securing Landlord's approval which will not be unreasonably withheld, Tenant shall have the right from time to time to install and operate advertising signs and radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the demised premises that may be reasonably necessary for the operation of Tenant's business.

20. Landlord's Right of Entry. Landlord and Landlord's authorized representatives shall have the right, during the normal business hours, to enter the demised premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the demised premises to any prospective tenant or purchaser or (iv) for any other reasonable and lawful purpose.

During the final one hundred eighty (180) days of the term hereof, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the demised premises customary signs advertising the demised premises for lease or for sale.

21. Indemnity and Exculpation:

A. Landlord shall not be liable to Tenant or to Tenant's employees, agents, servants, customers, invitees, or to any other person whatsoever, for any injury to persons or damage to property on or about the demised premises or any adjacent area owned by Landlord caused by the negligence or misconduct of Tenant, Tenant's employees, servants, customers, invitees, subtenants, licensees or concessionaires or any other person entering the demised premises under express or implied invitation of Tenant, or arising out of the use of the demised premises by Tenant and the conduct of Tenant's business thereon, or arising out of any breach or default by Tenant in the performance of Tenant's obligations hereunder, and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from any loss, expense or claims arising out of such damage or injury.

B. Landlord and Landlord's agents and employees shall not be liable to Tenant for any injury to persons or damage to property resulting from the demised premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the demised premises, regardless of the source, or dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever. Landlord shall not be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public or quasi-public work, or of any other persons whatsoever, excepting only duly authorized agents and employees of Landlord.

22. Default by Tenant. The following events shall be deemed to be events of default by Tenant under this Lease:

A. Failure of Tenant to pay any installment of rent or any other sum payable to Landlord hereunder on the date that same is due and such failure shall continue for a period of ten (10) days.

B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of rent or other sum of money, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant.

C. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.

D. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor.

E. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations.

F. Abandonment by Tenant of any substantial portion of the demised premises or cessation of use of the demised premises for the purpose leased.

23. Remedies of Landlord. Upon the occurrence of any of the events of default listed in paragraph 22, Landlord shall have the option to pursue any one or more of the following remedies without the notice or demand whatsoever:

A. Terminate this Lease, in which event Tenant shall immediately surrender the demised premises to Landlord. If Tenant fails to so surrender the demised premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the demised premises or arrearages in rent, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on demand the amount of all loss and damages which Landlord may suffer by reason of such termination, whether through inability to relet the demised premises on satisfactory terms or otherwise.

B. Terminate this Lease, in which event Tenant shall immediately surrender the demised premises to Landlord. If Tenant fails to so surrender the demised premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the demised premises or arrearages in rent, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on the date of such termination damages in any amount equal to the excess, if any, of the total amount of all monthly rental and other amounts to be paid by Tenant to Landlord hereunder for the period which would otherwise have constituted the unexpired portion of the term of this Lease over the then fair market rental value of the demised premises for such unexpired portion of the term of this Lease.

C. Enter upon and take possession of the demised premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof. Landlord may relet the demised premises and receive the rent therefor. Tenant agrees to pay to Landlord monthly or on

demand from time to time any deficiency that may arise by reason of any such reletting. In determining the amount of such deficiency, brokerage commissions, attorneys' fees, remodeling expenses and other costs of reletting shall be subtracted from the amount of rent received under such reletting.

D. Enter upon the demised premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord on demand for expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, together with interest thereon at the rate of ten percent (10%) per annum from the date expended until paid. Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by negligence of Landlord or otherwise.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained.

24. **Default by Landlord.** No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the demised premises or render Landlord liable for damages or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recoupment or entitle Tenant to take any action whatsoever with regard to the demised premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time so long as Landlord has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default. In the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right to:

(i) Proceed to cure such default and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding rental installment(s) due by Tenant to Landlord hereunder; or

(ii) Proceed to cure such default and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum.

If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give the notice required hereinabove to such mortgagee at the time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.

25. **Waiver of Subrogation.** Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon, or constituting a part of, the demised premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to such insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

26. **Title to Improvements.** Any and all improvements on the demised premises shall become the property of Landlord upon the expiration or termination of this Lease; provided, however: (i) if Tenant is not then in default hereunder, Tenant shall have the right to remove all personal property and trade fixtures owned by Tenant from the demised premises, but Tenant shall be required to repair any damage to the demised premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense; and (ii) Landlord may elect to require Tenant to remove all improvements from the demised premises and restore the demised premises to the condition in which the same existed on the date hereof, in which event Tenant shall promptly perform such removal and restoration in a good and workmanlike manner and at Tenant's sole cost and expense.

27. **Mechanics' and Materialmen's Liens.** Tenant agrees to indemnify and hold Landlord harmless of and from all liability arising out of the filing of any mechanics' or materialmen's liens against the demised premises by reason of any act or omission of Tenant or anyone claiming under Tenant, and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in paragraph 37 as additional rent; provided, however, that Landlord shall not so satisfy such liens until fifteen (15) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the demised premises.

28. **Title.** Tenant accepts the demised premises subject to: (i) the Base Lease; (ii) the Rules and Regulations; (iii) easements and rights-of-way and (iv) zoning ordinances and other ordinances, laws, statutes or regulations now in effect or hereafter promulgated by any governmental authority having jurisdiction over the demised premises.

29. **Quiet Enjoyment and Subordination.** Landlord covenants, represents and warrants that Landlord has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, upon payment of the rents herein reserved, and performance of the terms, conditions, covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the demised premises during the full term of this Lease; provided, however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon the demised premises. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien now existing or hereafter placed on the demised premises; provided, however, any such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations hereunder and attorn to the purchaser. Tenant also agrees upon demand to execute further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive the foreclosure of such mortgage, deed of trust or other lien.

30. **Rent on Net Return Basis.** Except for the rental due under the Base Lease during the time that AAT is the Landlord hereunder, it is intended that the rent provided for in this Lease shall be an absolutely net return to Landlord for the term of this Lease, free of any loss, expenses or charges with respect to the demised premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

31. **Holding Over.** Should Tenant, or any of Tenant's successors in interest fail to surrender the demised premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days prior written notice to the other, at a monthly rental equal to two hundred percent (200%) of the rent paid for the last month of the term of this Lease.

32. **Waiver of Default.** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

33. **Release of Landlord Upon Transfer.** All of Landlord's personal liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such transfer) shall terminate upon a transfer of the demised premises by Landlord, provided that the obligations of Landlord under this Lease are covenants running with the land and shall be binding upon the transferee of Landlord's interest in this Lease and the demised premises.

34. **Attorneys' Fees.** If, on account of any breach or default by Landlord or Tenant of their respective obligations under this Lease, it shall become necessary for the other to employ an attorney to enforce or defend any of such party's rights or remedies hereunder, and should such party prevail, such party shall be entitled to collect reasonable attorneys' fees incurred in such connection from the other party.

35. **Financial Information.** Tenant agrees that Tenant will from time to time upon the written request of Landlord during the term of this Lease furnish to Landlord such credit and banking references as Landlord may reasonably request.

36. **Estoppel Certificates.** Tenant agrees that from time to time, upon not less than ten (10) days' prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications).

B. The dates to which rent and other charges have been paid.

C. Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

D. If requested by Landlord, Tenant will not pay rent for more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by the Lease to be

furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's mortgagee fails to cure such default within the curative period allowed Landlord under this Lease.

Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications);

B. The dates to which rent and other charges have been paid;

C. Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

37. Interest on Tenant's Obligations and Manner of Payment. All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest at the rate of ten percent (10%) per annum from and after said tenth (10th) day until paid. If more than twice during the term of the Lease Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that the payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cash, cashier's check, certified check or money order, and the delivery of Tenant's personal or corporate check will no longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice.

38. Independent Contractor. It is understood and agreed that in leasing and operating the demised premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord.

39. Force Majeure. In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or hindered.

40. Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

41. Use of Language. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

42. Captions. The captions or headings or paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

43. Successors. The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including, but not limited to, any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

44. Severability. If any provision in this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

45. Notices. Any notice or document required or permitted to be delivered hereunder may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

LANDLORD:

TENANT:

Addison Airport of Texas, Inc.
P. O. Box 34067
Dallas, Texas 75234

City of Addison, Texas

46. Fees or Commissions. Each party hereto hereby covenants and agrees with the other that such party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the performance of the terms and provisions contained herein, and such party agrees to indemnify and hold the other party harmless from the payment of any such fees or commissions.

47. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

48. Governing Law and Venue. This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, and Landlord and Tenant both irrevocably agree that venue for any dispute concerning this Lease or any of the transactions contemplated herein shall be in any court of competent jurisdiction in Dallas County, Texas.

49. Entire Agreement and Amendments. This Lease, consisting of forty-nine (49) paragraphs and Exhibits A through B attached hereto, embodies the entire agreement between Landlord and Tenant and supercedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or in behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

EXECUTED as of the day month and year first above written.

LANDLORD:

ADDISON AIRPORT OF TEXAS, INC.

By: [Signature]

Its: [Signature]

CITY OF ADDISON, TEXAS

By: [Signature]

Its: [Signature]

TENANT:

By: [Signature]

Its: [Signature]

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STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Jeany Ridding
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 12 day of September, 1980.

Jacquie Sharp
Notary Public
Dallas
County, Texas

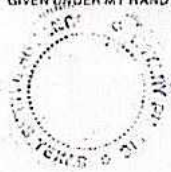


STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Robert L. Goss
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purpose and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 12 day of September, 1980.

Barbara L. Janner
Notary Public
Dallas
County, Texas

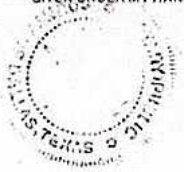


STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared William R. White
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 4th day of September, 1980.

Barbara L. Janner
Notary Public
Dallas
County, Texas



VOL. 1 PAGE

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AGREEMENT FOR
OPERATION OF THE ADDISON AIRPORT
BETWEEN
THE CITY OF ADDISON, TEXAS
AND
ADDISON AIRPORT, INC.

THE STATE OF TEXAS
COUNTY OF DALLAS

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT, made and entered into the 30th day of December, 1976, by and between the CITY OF ADDISON, TEXAS, a municipal corporation acting by and through the City Council (hereinafter "City") and ADDISON AIRPORT, INC., a Texas corporation (hereinafter "Company"), with an address at P.O. Box 34067, Dallas, Texas 75234.

WITNESSETH:

WHEREAS, the City has entered into a Contract of Sale whereby the City will acquire the principal portions of the existing Airport known as Addison Airport, in Dallas County, Texas, it being contemplated that the City will purchase approximately three hundred sixty-four (364) acres ("Property"), in part with federal funds available for such purpose, the Property being reflected and described on Exhibit "1" attached hereto.

WHEREAS, the City and the Company are desirous of having the Company operate and conduct all lawful, reasonable and appropriate activity at the Airport for the use of the general public and generally in accordance with the operations description set forth in Section 7 hereof; and

WHEREAS, in the exercise of its lawful authority, the City has entered into that certain Grant Agreement with the United States of America (acting through the Federal Aviation Administration (FAA), dated December 30, 1976, for the purpose of obtaining funds for the acquisition of the Property.

WHEREAS, the Company agrees to carry out the terms and conditions set forth in that certain Grant Agreement; and

WHEREAS, the City, during the term of this Agreement, agrees to consult with the FAA on the adjustment or modification of any term or condition in the Grant Agreement which because of the peculiar circumstances of the Airport operation the Company believes to be unworkable or impractical; and

WHEREAS, it has been found and determined by the City in accordance with its lawful duties, that it is essential, appropriate and necessary for its public purposes and for the public to acquire such adequate general aviation facilities; and

WHEREAS, the Mayor of the City of Addison has been duly authorized and empowered to execute the Agreement; and

WHEREAS, it is the intention of the parties that the Airport shall be operated in a manner as would be accomplished by a reasonably prudent airport operator and in accordance with sound business practices;

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and agreements herein set forth, the parties hereto hereby agree and contract as follows:

The City hereby leases to Company, and the Company hereby takes, upon the terms and conditions hereinafter specified, the following premises:

(i) the land described in Exhibit "1" as the Property and the improvements thereon owned by the City;

(ii) all easements, rights and appurtenances relating to the land (all property described in clauses (i) and (ii) above is herein sometimes collectively called the "Leased Premises"); and

(iii) City hereby assigns to Company all of its right, title and interest in and to the leases set forth in Exhibit "B" to the Contract of Sale.

As consideration for this Agreement, and in addition to the rents payable hereunder, the Company agrees to pay to the City the sum of Eight Hundred Thousand (\$800,000.00) Dollars, in cash, said payment to be made simultaneous with the release of this Agreement from escrow pursuant to that certain Escrow Agreement dated December 30, 1976, by and between the City, Company and Southwest Land and Title Company ("Escrow Agreement").

In the event this Agreement is not delivered out of escrow to the City and is returned to Company by reason of the Escrow Agreement, the Company shall have no liability for any payment to the City hereunder and this entire Agreement shall be null and void and of no force or effect as of the date this Agreement is executed.

Section 1. Definitions

(a) "Airport" means the Addison Airport as shown on Exhibit "2" hereof;

(b) "Improvements" means all improvements that specifically serve the Airport, including, but not limited to, streets, roadways, parking areas, aprons, runways, sewers and waterlines, all buildings and structures and additions, substitutions, accessions, and replacements thereto on the Leased Premises.

(c) "Gross Receipts" means all monies paid to the Company for sales made and for services rendered or agreed to be rendered at or from the Airport regardless of the time or place of receipt of the order therefor, and for sales made and for services rendered or agreed to be rendered outside the Airport if the order therefor is received at the Airport, the charges, rentals, fees and other payments of whatever kind of nature paid to the Company under any lease, sublease, permit, license, or any other agreement, oral or written, relating to the Airport, all landing, parking and other fees and charges paid to the Company from any user of the Airport, revenues paid to the Company for the sale or delivery of aviation fuel, petroleum and other products, including any fuel flowage fees, any other revenues of any type arising out of or in connection with the Company's services and operations at the Airport, including its operations thereof. Any addition, change, modification or alteration in the Company's method of performing its Airport function or responsibility which would adversely effect the Gross Receipts shall first require the approval of the City.

Section 2. Representations by City

The City is the duly and lawfully created, existing and recognized owner of the Leased Premises, having the power to enter into the transactions hereunder, and by proper action the City has been duly authorized to execute and deliver this Agreement.

Section 3. Representations by Company

The Company is a corporation duly incorporated under the laws of the State of Texas, is in good standing under the laws of said State; is duly authorized to do business in the State of Texas; has the power to enter into this Agreement without violating the terms of any other agreement to which it may be a party; and by proper corporate action had been duly authorized to execute and deliver this Agreement.

It generally will occupy and possess the Leased Premises for the public purposes of the City as set forth in Section 7 hereof.

Section 4. Term of Agreement

Subject to the terms, covenants, conditions and agreements contained in this Agreement, the Company shall have and hold the Leased Premises for a term commencing on the date of closing of the purchase of the Property in the Contract of Sale and ending 20 years thereafter.

The Company agrees to yield and deliver peaceably to the City possession of the Leased Premises together with all buildings, structures, improvements, additions and other installations therein or thereon, on the date of the expiration of this Agreement, promptly and in good operating condition, the intention being that when the Leased Premises are returned to the City they shall be in first-class condition giving due consideration to normal wear and tear and shall be free and clear of any and all liens, debts, contracts, leases or encumbrances of whatsoever kind, nature and description.

Section 5. Rent

(a) Company shall pay the City, on demand, the sum of \$100,000.00, as a special assessment for public improvements to be made by the City of Addison. The Company shall not be assessed or otherwise be liable for any further such assessments made outside of the Leased Premises during the term of the Agreement.

(b) The Company agrees to pay the City \$6,250.00 per month, or 3% of the Company's monthly Gross Receipts, whichever amount is the greater. Such installment shall be payable to the City of Addison, Dallas County, Texas, commencing on the 20th day of the second month after the effective date of this Agreement for the first month hereof, and on the 20th day of each calendar month thereafter for the calendar month preceding. Payment of such amounts shall be reduced by any real property or personal property taxes assessed by the City of Addison on the Property or assessed by the City of Addison on the improvements or this Agreement, commencing with the effective date of this Agreement, such reduction to be credited against the next succeeding installments of rent hereunder from and after date of payment of such taxes by the Company. The Company shall render to the City, on the 20th day of each calendar month, a sworn statement showing its Gross Receipts for each preceding month.

Section 6. Taxes and Assessments

The Company shall pay when due and before any fine, penalty, interest or cost may be added for non-payment; all levies, fees, water and sewer rents or other rents, rates and charges, permit fees, inspection fees and other charges, if any, in each case whether general and special, ordinary and extraordinary, which are lawfully imposed, whether or not the same were within the contemplation of the parties

hereto, together with any interest and penalties thereon, which imposed or levied upon or assessed against or in respect to this Agreement, or which may be a lien upon the Leased Premises. The Company shall pay all of the personal property taxes assessed by the City for the year 1976.

Section 7. Uses of Leased Premises

(a) The Company shall have control of the operation of the Leased Premises and shall operate them on a nondiscriminatory and uniform basis consistent with the normal public use of airports of a similar kind, and in accordance with all applicable laws and regulations. The use of the areas thereof shall be for the following purposes only:

- (i) For the handling and accommodation of operators, crews and travelers arriving at or departing from the Leased Premises;
- (ii) For the storage, parking, maintenance and servicing of aircraft in covered and open areas;
- (iii) For the sale, maintenance, repair, servicing, overhaul, conversion and modification of aircraft, and aircraft engines, assemblies, accessories and component parts;
- (iv) For the storage of fuel and for the fueling of aircraft;
- (v) For the charter and leasing of aircraft;
- (vi) For schools for the training of aeronautical pilots, mechanics, repairmen, navigators and dispatchers, and other aeronautical personnel;
- (vii) For the storage, parking, maintenance, servicing and fueling of automotive vehicles, automotive equipment and other equipment owned or operated by the Company in connection with the operation of the Leased Premises or by other persons using the Leased Premises for other purposes authorized hereunder;
- (viii) For the operation of stores, concessions and other consumer service activities, reasonably required for the accommodation of operators, crews and travelers arriving at or departing from the Leased Premises by aircraft, and other persons doing business with or who are the guests of the Company or other users of the Leased Premises;
- (ix) For the fabrication, manufacture, testing or development of aeronautical materials which will be used or installed in aircraft at the Leased Premises; and
- (x) For all operational, administrative, office and other such related functions in connection with the activities authorized hereunder;

The provisions of this Section shall be inserted and enforced by the Company in the agreement(s) of any other future user of the Leased Premises.

(b) In the performance of the Uses of the Airport granted by the City hereunder, the Company agrees to operate the Airport for the use and benefit of the public; to make available all airport facilities and services to the public on fair and reasonable terms and without unjust discrimination and to provide space on the Airport, to the extent available, and to grant rights and privileges for use of the landing facilities of the Airport to all qualified persons, firms and corporations desiring to conduct aeronautical operations at the Airport.

(c) The Company shall perform the above-named Uses in a manner which shall be compatible with the latest FAA-approved Airport Layout Plan.

(d) Any clause or provision of this Agreement to the Company notwithstanding:

(i) The Company agrees to operate the Airport in accordance with the obligations of the City to the Federal Government under above-described Grant Agreement. In furtherance of this general covenant, but without limiting its general applicability, the Company specifically agrees to operate the Airport for the use and benefit of the public; to make available all airport facilities and services to the public on fair and reasonable terms and without discrimination and to provide space on the Airport, to the extent available, and to grant rights and privileges for use of the landing area facilities of the Airport to all qualified persons, firms and corporations desiring to conduct aeronautical operations on the Airport. In this connection, the Company may from time to time adopt standard rules and regulations concerning the use and operation of the Airport, provided such rules and regulations shall not constitute a violation of the Grant Agreement.

(ii) It is specifically understood and agreed that nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act.

(iii) The City reserves the right to take any action it considers necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent the Company from erecting, or permitting to be erected, any building or other structures on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

(iv) This Agreement shall be subordinate to the provisions of any existing or future agreement entered into between the City and the United States to obtain federal aid for the improvement or operation and maintenance of the Airport.

Section 8. Orderly Conduct of Operations

The Company shall conduct its operations in a proper and orderly manner and will not annoy, disturb or be offensive to others. The Company shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, agents, representatives, contractors, and the conduct and demeanor of its customers, invitees and those doing business with it in the Leased Premises.

The terms of this Section shall be inserted and enforced by the Company in the agreement(s) of any other user of the Airport.

Section 9. Standards of Operation

The Company shall not knowingly commit any nuisances on the Leased Premises, or do or permit to be done anything which may result in the creation or commission of a nuisance on the Leased Premises.

The terms of this Section shall be inserted and enforced by the Company in the agreement(s) of any other user of the Airport.

Section 10. Insurance

The Company will maintain at its expense insurance on the Leased Premises of the following character:

(a) Insurance against loss or damage to improvements by fire, lightning, other risks from time to time included under the standard extended coverage policies, and sprinkler and vandalism and malicious mischief, all in amounts sufficient to prevent City or Company from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than 80% of the full insurable value of the Leased Premises. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to City, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.

(b) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises, such insurance to afford protection to City of not less than \$500,000.00 with respect to any one accident, and not less than \$200,000.00 with respect to property damage. Policies of such insurance shall be for the benefit of City and Company.

(c) Workmen's compensation insurance covering all persons employed by Company in connection with any work done on or about the Leased Premises with respect to which claims for death or bodily injury could be asserted against City, Company or the Leased Premises, or in lieu of such workmen's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency of the State of Texas.

(d) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$100,000.00 for damage to property resulting from such perils.

(e) Such other insurance on the improvements in such amounts and against such other insurable hazards which at the time are commonly obtained in the case of property similar to the improvements.

(f) In addition to all other insurance required hereunder, the Company will maintain at its expense hangar keeper's liability insurance providing for coverage in the following limits: \$200,000.00 per aircraft and \$400,000.00 per occurrence on property damage to aircraft in the care, custody or control of the Company.

Section 11. Carriers, Insureds, etc.

The insurance referred to in Section 10 shall be effected under a valid and enforceable policy or policies or contract or contracts issued by (i) an insurer or insurers permitted to do business in the State of Texas approved by the City, which approval will not be unreasonably withheld. Such insurance shall name as the insured parties thereunder the City and the Company, as their respective interest may appear. The Company may prosecute any claim against, or contest any settlement proposed by, any insurer at its expense. In such event, the Company may bring such prosecution or contest any settlement in the name of the City, Company or both, and City will join therein at the Company's written request upon the City's receipt of an agreement by the Company to indemnify City against all costs, liabilities and expenses in connection with such prosecution or contest.

Section 12. Delivery of Evidence of Insurance

Company shall deliver to the City at the execution and delivery of this Agreement the original or duplicate policies or satisfactory

evidence of insurance or insurance certificates for insurance required in Section 10 hereof. The Company shall within ten days prior to the expiration of any such insurance, deliver to the City a place of expired policies or certificates or other original or duplicate policies or other certificates of the insurers endorsed as in above provided in Section 10 hereof evidencing renewal of such insurance.

Section 13. Casualty

If any Improvements or any part thereof owned by the City shall be damaged or destroyed by fire, theft or other casualty, the Company shall with reasonable promptness and diligence, rebuild, replace, and repair any damage or destruction to the Improvements, at its expense in conformity with the requirements of Section 14, in such manner as to restore the same to a unit of equal size, quality and condition to that which existed prior to such damage or destruction. Insurance proceeds payable with respect to such casualty shall belong to the Company to the extent necessary to make such repairs.

It is agreed that damage or destruction, whether partial or total, by any cause whatsoever, of the Improvements, except upon termination of this Agreement as is provided for herein, shall not release the Company from any obligation under this Agreement.

Section 14. Maintenance and Repair

The Company agrees and acknowledges that it has received the Leased Premises in good order and condition, and further agrees to accept the premises as is. The Company further agrees that it will, at its expense, keep and maintain the Leased Premises, and the Improvements in good repair and appearance, and in good mechanical condition, except for ordinary wear and tear, and will with reasonable promptness make all, interior and exterior, structural and non-structural, foreseen and unforeseen, ordinary and extraordinary changes, repairs, substitutions and replacements (substantially equivalent to the original work) of any kind and nature which may be required to be made upon or in connection with the Leased Premises and Improvements or any part thereof, in order to keep and maintain the Leased Premises and Improvements in as good repair, mechanical condition and appearance as they were originally, except for ordinary wear and tear.

Section 15. Failure to Commence and Complete Repairs

In the event the Company fails to commence or complete repairs, replacements or painting which is required hereunder within a period of thirty days after written notice from the City, or fails to continue and diligently complete any such repair, the City may at its option make such repairs, replacement or do such painting, the cost of which shall be paid by the Company upon written demand.

Subject to the right of existing sub-leases, the City, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Airport for the purpose of inspecting the Leased Premises, for observing the performance by the Company of its obligations under this Agreement, and for the doing of any act or thing which the City may be obligated or have the right to do under this Agreement.

Nothing in this Section shall impose or shall be construed to impose upon the City any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so. The City shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Leased Premises nor for any injury or damage to the Leased Premises nor to any property of the Company or of any other person located in or thereon other than those occasioned by the acts of the City.

Section 16. Alterations, Construction by Company for Airport Purposes

Company may erect structures, make improvements, install fixtures, or do any other construction work on the Leased Premises, or alter, modify or make additions, improvements, repairs to, or replacement of any improvements or any structure now existing or hereafter built on the Leased Premises.

Any such alterations, additions, improvements, installations, repairs, substitutions or replacements shall be expeditiously completed, in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto. All work done in connection with each such alteration, addition, improvement, installation, repair, substitution or replacement shall comply with the requirement of any insurance policy required to be maintained by Company hereunder, with any applicable requirements of the Agreement.

Any improvement to or alteration of the Airport under this Section or under Section 17 shall be consistent with the latest FAA-approved version of the Airport Layout Plan.

Section 17. Alteration, Construction by City

The City may erect structures, make improvements, install fixtures, or do any other construction work on the Airport, whether Airport-related or not; provided, however, the erection of such structures, the making of such improvements, the installation of such fixtures, or the doing of such construction work shall not unreasonably interfere with the operation or development of the Airport, including the maximization of revenues. The City shall give the Company reasonable advance written notice of any action taken hereunder.

Any such alterations, additions, improvements, installation, repairs, substitutions or replacements shall be completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto. All work done in connection with each alteration, addition, improvements, installation, repair, substitution or replacement shall be done at the City's expense and shall comply with the requirement of the insurance policy required to be maintained by the City or Company, hereunder. As to any construction, buildings or other structures constructed by the City which are not related to the Airport and its operations, Company shall not be required to furnish insurance.

Section 18. Liens

The Company will not directly or indirectly create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, security interest, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to:

- (a) The Leased Premises or any part thereof,
- (b) City's ownership interest, or
- (c) the Rent or other sums payable by Company under this Agreement.

The existence of any mechanic's, laborer's, materialman's, supplier's, or vendor's lien, or any right in respect thereof shall not constitute a violation of this provision if payment is not yet due upon the contract or for goods or services, or the lien(s) are being contested in good faith by the Company.

This Section shall not apply to security interests or other liens with respect to buildings or improvements on, or which may later be constructed on, the Leased Premises which are not owned by the City.

Section 19. Prices and Rates

The Company shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. In furtherance of this objective, a list of charges will be maintained and available for inspection by the public for all services, materials, supplies and privileges provided by the Company and any Airport tenant. However, the Company, and any Airport tenant, may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

The Company shall, from time to time, as the need arises, make and publish changes in the prices being charged; provided, however, fifteen (15) days prior to any such changes, the Company shall provide to the City a list of such charges. If no objection is received by the City to such changes in prices within fifteen (15) days, the price changes shall become effective. The City may object to any changes in prices within the fifteen-day period; provided, however, the only basis for any such objection by the City will be on the ground that such pricing change would constitute a violation of a present or future Grant Agreement with the Federal Aviation Administration.

It is further understood and agreed that in the event others on the Airport undertake to sell or dispense fuels or lubricants for aircraft or other machinery being used on the Airport, the Company shall impose reasonable standards consistent with any grant agreements with respect to any fueling operations in order to assure adequate safety and efficient operations on or about the Airport. Further, any persons selling or dispensing fuel or lubricants for aircraft or other machinery shall pay to the Company a reasonable and non-discriminatory fuel flowage fee.

Section 20. Subleases

(a) The Company shall have the right and is expressly hereby authorized to sublease such portions of the Leased Premises as it shall deem appropriate for the growth and development of the Airport and the maximization of revenues; provided any such sublease shall be for the purpose of carrying out one or more of the activities set forth in Section 7. During the existence of this Agreement, all revenues from any sublease shall belong to the Company, subject only to the rights of the City to a percentage of Gross Receipts as provided in Section 5 (b).

(b) The Company shall not enter into any sublease with any tenant which is owned or controlled, in whole or in part, by any of the officers, directors or stockholders of the Company without the prior written approval of the City, which approval shall not be unreasonably withheld.

(c) The Company shall not enter into any sublease unless the term of such sublease, including any renewal or option provisions, expires and terminates on or before twenty years after the effective date of this Agreement, without the prior written consent of the City.

(d) Upon request by the Company from time to time, that a sublease is entered into by the Company, the City shall deliver to any such subtenant its estoppel certificate certifying unto the subtenant that this Agreement is in full force and effect.

Section 21. Applicable Governmental Requirements

The Company agrees:

(a) at its expense, to procure from governmental authority, having jurisdiction, all licenses, certificates, permits or other authorization which may be necessary for the conduct of its operations or for any additional construction required pursuant to the terms of this Agreement.

(b) that it shall, at its expense, comply with and cause the Leased Premises and Company's operations to comply with all governmental statutes, laws, rules, orders, regulations and ordinances affecting the Leased Premises or any part thereof or the use or occupancy of any part thereof.

Section 22. Indemnification

Company covenants and agrees that it will defend, indemnify and save harmless the City, its council, officers, agents and employees from and against any and all actions, suits, claims, demands, liabilities, losses, damages, costs, expenses or judgments of any nature whatsoever, arising from:

(a) any injury to, any nuisance, or the death of any person or any damage to property on the Leased Premises, or any damage to property on the Leased Premises, or in any manner growing out of or connected with the use, non-use, condition or occupancy of the Leased Premises or any part thereof or resulting from the condition thereof,

(b) the ownership, use or non-use or condition of the Improvements, or

(c) violation by Company of any agreement or condition of this Agreement, and of any contract or agreement to which Company is a party, or any restriction, statute, law, ordinance or regulation or otherwise, in each case affecting the Leased Premises or the ownership, occupancy or use thereof.

In case any action or proceeding be brought against the City by reason of any such claim, the Company covenants upon notice from the City to resist or defend such action, and the City will cooperate and assist in the defense of such action or proceeding. If reasonably requested so to do by the Company; provided, however, that the Company shall not be liable for damages not covered by insurance required to be carried pursuant to this Agreement and caused solely by the negligence or deliberate act of the City, or any of its council, officers, agents, servants or employees. This provision shall not operate to indemnify others when liability for damages arises due to the fault of such others, unless they are insured or indemnified parties under the insurance policies or contracts required by this Agreement.

Section 23. Federal Airport Aid

The City has made application to the Federal Aviation Administration for a grant(s) of federal funds to partially defray the cost of acquiring the Leased Premises. The Company, in its management, operation, maintenance and use of the Airport, shall be subject to and hereby assumes the terms, conditions and provisions of any and all grant agreements and project applications imposed on the City by the Federal Aviation Administration, and any other federal obligations or restrictions with respect thereto. The Company shall in its agreements with other users of the Airport insert in said agreements the appropriate provisions and requirements as required by any and all of the provisions of the grant agreement and the project applications, the assurances set forth therein and any other federal obligations or restrictions with respect thereto.

To the extent that the City considers it prudent, considering the requirements attached to the acceptance of such funds, the City shall continue to apply for and make maximum use of all available federal and state funds for the development of the Airport; provided nothing in this Section obligates or requires the City to apply for such funds, other than funds necessary to acquire Additional Purchases.

Section 24. Notice to Indemnified Parties

Notwithstanding the indemnification set forth in Section 22, the Company shall forward to the City a copy of every notice, summons, complaint, or other process received in any legal proceedings encompassed by such indemnification or in any way affecting the rights of the City, or any other indemnified party.

Section 25. Liability of Officials

No officers, agent or employee of the City or the Company shall be personally liable for any of their acts carrying out the provisions of the Agreement, in exercising any power or authority granted to them pursuant to the Agreement, it being understood that in such matters they act as agents and representatives of the City and the Company.

Section 26. Non-Discrimination

Company will, in its operations on the Airport, be bound by the Civil Rights obligations imposed on the City. Company will not deny any benefits to or otherwise discriminate against any person or group on the basis of race, color, sex, or national origin. Company will comply with applicable portions of, and will effect City's compliance with the Attachment 2 (including OST Regulations, Part 21) attached hereto and incorporated herein by reference for all purposes.

Section 27. OMBE: Advertisements, Bids, Concessions:

In addition to complying with the above and normal procedures required of the City by state/federal law and agreements, the Company will send a copy of all invitations for bids, advertised or negotiated, for concessions or other businesses at the Airport to the appropriate Office of Minority Business Enterprise (OMBE) representative as identified by the FAA Regional Civil Rights Office. The Company will disclose and make information about the contracts, contracting procedures and requirements available to the designated OMBE representative and minority firms on the same basis that such information is disclosed and made available to other organizations or firms. Responses by minority firms to invitations for bids shall be treated in the same manner as all other responses to the invitations for bids.

Section 28. Assignment

Except as explicitly set forth herein or contemplated by this Agreement, the Company shall not assign, sublet, sell, convey or transfer its rights under this Agreement or any part thereof without the prior written consent of the City, provided, however, that this Agreement may be assigned in its entirety without such consent for a period of one year from the effective date of this Agreement. The City hereby agrees that it will not unreasonably withhold its consent to such an assignment or sublease, sale, transfer, and shall not make any charge for any such assignment, sublease, sale or transfer made with its consent.

Section 29. Events of Default and Remedies

The following shall be "events of default" as to the Company under this Agreement and the term "event of default" as to the Company shall mean, whenever it is used this Agreement, any one or more of the following events:

(a) Failure by the Company to pay when due or cause to be paid when due the Rent required to be paid under Section 5 hereof.

(b) Failure by the Company to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the City, unless the City shall agree in writing to an extension of such time prior to its expiration.

(c) The Leased Premises shall be abandoned, deserted or vacated by the Company or any lien shall be filed against the Leased Premises or any part thereof in violation of this Agreement and shall remain unreleased for a period of sixty days from the date of such filing unless within said period the Company is contesting in good faith the validity of such lien.

(d) The dissolution or liquidation of the Company or the filing by the Company of a voluntary petition in bankruptcy, or failure by the Company within sixty days to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Leased Premises, or the adjudication of the Company as a bankrupt, or general assignment by the Company for the benefit of its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Company in any proceeding for its reorganization instituted under the provisions of the general bankruptcy act, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Company", as used in this subsection, shall not be construed to include cessation of the corporate existence of the Company following a transfer of all or substantially all of its assets as an entirety, under the conditions permitting actions contained in Section 29 hereof, which such dissolution or liquidation it is acknowledged will occur.

Section 30. Remedies on Default

Whenever any event of default as to the Company referred to in Section 29 hereof shall have happened and be subsisting, the City may take any one or more of the following remedial steps as against the Company:

(a) The City may re-enter and take possession of the Leased Premises without terminating this Agreement and sublease (or operate as a subleasee) the Leased Premises for the account of the Company, holding the Company liable for the difference between the rents and other amounts payable by the Company hereunder and the rents and other amounts payable by such sublessee in such subleasing or, if operated by the City, the difference between the net revenues received from such operations and the rents and other amounts payable by the Company hereunder.

(b) The City may terminate this Agreement.

(c) The City may take whatever other action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement.

Section 31. No Remedy Exclusive

No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing under law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, unless such notice is herein expressly required by law.

Section 32. No Additional Waiver Implied

In the event any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 33. Termination by Company

The Company may terminate this Agreement upon the occurrence of any one or more of the following reasons:

(a) In the event the Airport shall be closed or its operations curtailed by more than fifty percent of its achieved operating level in terms of daily average departing and arriving flights, the Company in its reasonable discretion may cease or curtail its operations in the Leased Premises during the period that the Airport operations have ceased or have been so curtailed, and if such condition shall continue unabated for more than two years, the Company shall have the right and option to terminate the Agreement upon thirty days prior written notice to the City.

(b) The City shall fail to perform any of its obligations under this Agreement within sixty days after receipt of notice of default hereunder from the Company (except where fulfillment of its obligations require activity over a period of time and the City shall commence to perform whatever may be required for fulfillment within sixty days after the receipt of notice and continue such performance without interruption, except for causes beyond its control).

Upon the occurrence of any of the foregoing events, or at any time thereafter during the continuation of any such condition, the Company may, by sixty days written notice terminate this Agreement, such termination to be effective upon the date set forth in such notice and to have the same effect as if the terms hereof had expired on that date, subject, as aforesaid, to the provisions of this Section.

No waiver by the Company of any default on the part of the City, in the performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the City shall be or shall be construed to be a waiver by the Company of any other or subsequent default in the performance of any of said terms, covenants and conditions.

Section 34. Access and Egress

Except as set forth in this Agreement, the City hereby grants to the Company full and unrestricted access to and egress from the Leased Premises and between the Leased Premises and the public roadways for the Company, its employees, guests, patrons, invitees, contractors, suppliers of materials, furnishers of services, its or their equipment, vehicles, machinery and other property, without charge to Company or to said employees, guests, patrons, invitees, contractors, suppliers of materials and furnishers of services, or their said equipment, vehicles, machinery or other property.

Section 35. Company's Right to Remove Property

The Company shall have the right at any time during the term of this Agreement or any renewal or extension thereof, or at the expiration or earlier termination thereof, to remove any nonessential personal property which it may have on the Leased Premises, including, without limitation, furniture, equipment and machinery; provided the City will purchase from the Company, at its then fair market value, any personal property which the City deems essential.

Section 36. Termination, Settlement

In the event the City exercises its right to terminate the Agreement or any part thereof, the Company and the City shall endeavor in good faith to negotiate a sale by the Company to the City or its designee of the Company's personal property located on the Leased Premises. Upon termination of the Agreement, the City may, and the Company shall, remove any improvements on the Leased Premises belonging to the Company at the Company's expense if required by the City.

Section 37. Settlement

In the event that any sums due or to become due the Company upon termination of this Agreement are paid or payable to the City, the City shall not have any obligation to make such payment or settlement to the Company.

(i) until receipt of payment due to City from Company in accordance with pertinent provisions of this Agreement under which termination is permitted and,

(ii) until Company has paid all other sums due under this Agreement.

Section 38. Quiet Enjoyment

The City covenants that through the term hereof, the Company shall have, hold and enjoy peaceful and uninterrupted possession of all of the Leased Premises, subject to the performance of the covenants as herein provided.

Section 39. No Third Party Beneficiary

No provision contained in or incorporated by the Agreement shall create or give to any third party or parties any claim or right of action against the Company or the City, beyond such claims or rights of action which legally exist in the absence of any provision of said Agreement.

Section 40. Severability

Each and every covenant and agreement contained in this Agreement is and shall be construed to be a separate and independent covenant and agreement.

Section 41. Binding Effect

All of the covenants, conditions, and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Company, subject to the limitations contained herein restricting such assignment by the Company, to the same extent as if each such successor and assign were in each case named as a party to this Agreement. This Agreement may not be altered, modified, or discharged except by a writing signed by the City and the Company.

Section 42. Governing Law

This Agreement shall be governed by and interpreted under and in accordance with the laws of the State of Texas.

Section 43. Venue

The venue of any action drawn under this Agreement shall lie in Dallas County, in the State of Texas.

Section 44. Force Majeure

Neither the City or the Company shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control, and the time for performance shall be automatically extended by the period the party is prevented from performing its obligations hereunder.

Section 45. Issuance of Revenue Bonds for Future Improvements

City and Company acknowledge that as the Airport develops such circumstances may require that additional improvements ("Future Improvements") will be needed in order to provide convenient and necessary services at the Airport. Subject to the approval of plans and specifications by the City as submitted by the Company, the City may make such acquisitions, additions, extensions, improvements and modifications to the Airport as shall be recommended by the Company. In order to obtain funds for such purposes, the City, in its discretion, may provide for the issuance of Airport revenue bonds.

Section 46. Airport Boundaries

The City will not grant any access, privilege, license, or permission of any kind to any person, firm or corporation using, owning or occupying any land outside the designated boundaries of the Airport as shown on Exhibit "2" hereof, to use or have access to the Airport.

Section 47. Covenant by Company

It is understood and agreed by the parties hereto, that the Company will not make any improvements, changes, alterations, modifications, or removals at the Airport, which will effectively destroy the ability of the Airport to render first-class service to its customers and for the maximization of revenues.

Section 48. Record Keeping

The Company shall maintain in accord with accepted accounting practice and make available to an authorized representative of the City for consideration records, books and its annual audit prepared by an independent Certified Public Accountant. The Company shall permit such authorized representative of the City to inspect such books and records during ordinary business hours of the Company and at times reasonably convenient to the Company.

Section 49. Notices

Notices provided for in this Agreement shall be sufficient if sent by registered mail, postage prepaid, addressed if to the City — The City of Addison, P. O. Box 144, Addison, Texas, 75001, Attention: City Administrator, or to such other address and person it may direct in writing; and if to Company — Addison Airport, Inc., P. O. Box 34067, Dallas, Texas 75234, or to such other address and person as it may direct in writing. Notices shall be deemed completed when mailed unless otherwise herein required.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed as of the date first above written.

ATTEST:

Joyce H. Demers
SECRETARY

CITY OF ADDISON, TEXAS

BY:

Jerry Redding

APPROVED AS TO FORM:

Robert L. McCall
CITY ATTORNEY

ADDISON AIRPORT, INC.

ATTEST:

Margaret C. Bunch
SECRETARY

BY:

[Signature]

FIELD NOTES

BEING a tract of land out of the E. Cook Survey, Abstract 326, the William Lomax Survey, Abstract 792, the George Syms Survey, Abstract 1344, the William Rowe Survey, Abstract 1257, and part of Lot 1, and Lot 2 of Block "A" of Carroll Estates Addition, Dallas County, Texas, and being more fully described as follows:

BEGINNING at a fence post found for the apparent intersection of the North right-of-way line of Keller Springs Road, a 50 foot street, and the East line of Dooley Road, a 60 foot street, said beginning point being S 89° 58' 54" E 30.00 feet, thence N 0° 05' 50" E 25.00 feet from the apparent northwest corner of the E. Cook Survey, Abstract 326;

THENCE N. 89° 58' 54" W. a distance of 105.72 feet with the North line of said Keller Springs Road to an angle point in the right-of-way;

THENCE N. 56° 19' 03" W. a distance of 90.20 feet with said angle in the right-of-way to a point in the East right-of-way line of Dooley Road;

THENCE N. 0° 03' 47" W. a distance of 1457.70 feet with the East line of said Dooley Road to a point;

THENCE N. 20° 38' 30" W. a distance of 170.87 feet to the apparent West right-of-way line of said Dooley Road;

THENCE S. 0° 03' 47" E. a distance of 313.49 feet with the apparent West line of said Dooley Road to a point;

THENCE N. 89° 23' 56" W. a distance of 208.00 feet to an iron pin;

THENCE N. 0° 14' 32" W. a distance of 161.00 feet to an iron pin;

THENCE N. 89° 56' 00" W. a distance of 203.65 feet to a point;

THENCE N. 20° 38' 30" W. a distance of 2156.07 feet to a point in the apparent East right-of-way line of New Dooley Road, a 100 foot street;

THENCE N. 0° 09' 30" E. a distance of 1189.87 feet with the East line of said New Dooley Road;

THENCE N. 89° 53' 26" E. a distance of 1165.44 feet to a point in the apparent West line of Dooley Road;

THENCE S. 0° 03' 47" E. with the apparent West line of Dooley Road, at 335.02 feet passing a concrete monument for a total distance of 1550.38 feet to an iron pin;

THENCE S. 20° 46' 10" E. a distance of 539.44 feet with the West line of said Dooley Road to an iron pin for the beginning point of a curve to the left;

THENCE in a southeasterly direction with the curved West line of said Dooley Road having a central angle of 69° 19' 04", a radius of 337.18 feet a distance of 407.93 feet to a point in the South right-of-way line of Keller Springs Road;

THENCE N. 89° 54' 46" E. a distance of 2135.61 feet with the South line of said Keller Springs Road to a point in the West right-of-way line of Addison Road;

THENCE S. 0° 14' 20" E. a distance of 307.44 feet with the West line of said Addison Road to an iron pin;

THENCE S. 89° 45' 40" W. a distance of 290.00 feet to a point;

THENCE S. 0° 14' 20" E. a distance of 210.72 feet to a point;

THENCE S. 43° 16' W. a distance of 1595.29 feet to an iron pin;

THENCE S. 46° 44" E. a distance of 202.51 feet to a point;

THENCE S. 20° 43' E. a distance of 350.85 feet to a point;

THENCE N. 69° 17' E. a distance of 33.09 feet to a point;

THENCE N. 71° 12' 51" E. a distance of 185.72 feet to a point;

THENCE N. 44° 44' 08" E. a distance of 7.05 feet to an iron pin found for the Southwest corner of a tract of land conveyed to O.J. Broughton and E.E. Ericson by deed recorded in Volume 4350, Page 491, Deed Records of Dallas County;

THENCE N. 89° 54' 40" E. a distance of 819.46 feet with the South line of the Broughton tract to an iron pin in the West line of said Addison Road;

THENCE S. 0° 14' 20" E. a distance of 400.82 feet with the West line of said Addison Road to a point in the apparent common survey line between the William Lomax Survey, Abstract 792, and the E. Cook Survey, Abstract 326;

THENCE S. 89° 37' 20" E. a distance of 58.68 feet with said common survey line to a point in the West line of said Addison Road and the beginning of a curve to the left;

THENCE Southerly with said curve, and the West line of Addison Road, having a central angle of 1° 53' 11", a radius of 746.30 feet, for a distance of 24.57 feet;

THENCE S. 26° 12' 50" E. 34.05 feet with the West line of Addison Road to the beginning of a curve to the right;

THENCE in a southeasterly direction with the curved West line of said Addison Road having a central angle of 25° 50", a radius of 686.30 feet for a distance of 309.44 feet;

THENCE S. 0° 22' 50" E. a distance of 2081.61 feet with the West line of said Addison Road to an angle point in the right-of-way;

THENCE N. 69° 37' 10" E. a distance of 10.00 feet with said angle in the right-of-way to a point in the West line of said Addison Road;

THENCE S. 0° 22' 50" E. a distance of 812.30 feet with the West line of Addison Road to a point;

THENCE S. 69° 37' W. a distance of 185.70 feet to a point;

THENCE S. 0° 22' 50" E. a distance of 263.11 feet to a point;

THENCE S. 66° 06' 26" W. a distance of 17.27 feet to a point;

THENCE S. 0° 22' 50" E. a distance of 211.04 feet to an iron pin in the North right-of-way line of the St. Louis and Southwestern Railroad;

THENCE S. 66° 06' 26" W. a distance of 759.90 feet with the North line of said St. Louis and Southwestern Railroad to an iron pin and the most easterly corner of Addison Airport Industrial District;

THENCE N. 67° 01' 55" W. a distance of 273.80 feet to an iron pin in the easterly line of said Addison Airport Industrial District;

THENCE N. 20° 39' 35" W. a distance of 572.28 feet with the easterly line of said Addison Airport Industrial District to an iron pin;

THENCE S. 75° 46' 25" W. a distance of 4 3 feet to a point;
 THENCE N. 89° 56' 35" W. a distance of 658.63 feet to a point;
 THENCE N. 0° 03' 25" E. a distance of 160.00 feet to a point;
 THENCE N. 89° 56' 35" W. a distance of 160.00 feet to a point in the East right-of-way line of Dooley Road;
 THENCE N. 0° 03' 25" E. a distance of 10.00 feet with the East line of Dooley Road to a point;
 THENCE S. 89° 56' 35" E. a distance of 797.46 feet to a point;
 THENCE N. 20° 43' 25" E. a distance of 408.36 feet to an iron pin in the easterly line of said Addison Airport Industrial District;
 THENCE N. 20° 39' 35" W. a distance of 2386.20 feet with the easterly line of said Addison Airport Industrial District to an iron pin for the northeast corner of Addison Airport Industrial District;
 THENCE N. 20° 43' 53" W. a distance of 320.72 feet to an iron pin;
 THENCE N. 89° 49' 30" E. a distance of 9.98 feet to an iron pin;
 THENCE N. 20° 17' 10" W. a distance of 389.50 feet to an iron pin;
 THENCE N. 89° 54' 10" W. a distance of 117.08 feet to an iron pin in the apparent East right-of-way line of said Dooley Road;
 THENCE N. 0° 05' 50" E. a distance of 502.30 feet with the apparent East line of said Dooley Road to the place of beginning and containing 365.340 acres of land, more or less, save and except the following 1 acre tract;

Beginning at a fence post found for the apparent intersection of the North right-of-way line of Keller Springs Road, a 50 foot street, and the East line of Dooley Road, a 60 foot street, said point being S. 69° 58' 54" E. 30.00 feet, thence N. 0° 05' 50" E. 25.0 feet from the apparent northwest corner of the E. Cook Survey, Abstract 326; Thence N. 89° 58' 54" W. 105.72 feet with the apparent North line of Keller Springs Road; Thence N. 56° 19' 03" W. 90.20 feet to a point in the East line of Dooley Road; Thence N. 0° 03' 47" W. 1457.70 feet with the apparent East line of Dooley Road; Thence N. 20° 38' 30" W. 170.87 feet to a point in the apparent West line of Dooley Road and the BEGINNING POINT of this description;

THENCE S. 0° 03' 47" E. 209.0 feet with the West line of Dooley Road;

THENCE N. 89° 23' 56" W. 208.0 feet to an iron pin;

THENCE N. 0° 14' 32" W. 209.0 feet to an iron pin;

THENCE S. 89° 23' 56" E. 208.0 feet to the place of beginning and containing 1.0 acres of land, more or less.

The plat hereon is a true and accurate representation of the property as determined by actual survey, the lines and dimensions of said property being as indicated by the plat; all improvements being within the boundaries of the property.

Easements of record that could be located are shown. This plat is subject to any easements of record not shown.

5 JAN 1977

Date

W. J. Wischmeyer
 Registered Professional Engineer



EXHIBIT "A" PROPERTY MAP ADDISON MUNICIPAL AIRPORT ADDISON, TEXAS

Riewe & Wischmeyer, Inc.

CONSULTING ENGINEERS

DALLAS, TEXAS

DECEMBER 1976

100-11

AMENDMENT TO GROUND LEASE

STATE OF TEXAS §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS:

THIS AMENDMENT TO GROUND LEASE is made and entered into this the 12th day of January, 1983, by and among THE TOWN OF ADDISON, TEXAS, a municipal corporation, hereinafter sometimes referred to as the "City", ADDISON AIRPORT OF TEXAS, INC., a Texas corporation, hereinafter sometimes referred to as "AATI" and WILLIAM R. WHITE, hereinafter referred to as "Tenant";

WHEREAS, on September 4, 1980, the parties hereto entered into a Ground Lease whereby Tenant leased from the City and AATI a certain tract of land situated on the Addison Airport, a copy of which Ground Lease is attached hereto and marked Exhibit "A" and made a part hereof ("Ground Lease"); and

WHEREAS, the parties desire to amend such Ground Lease for the purpose of increasing the area of the demised premises and increasing the rental charged therefor;

NOW, THEREFORE, for and in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Paragraph 4 of the Ground Lease is hereby amended to read as follows:

4. Rental: Subject to adjustment as hereinbelow provided, Tenant agrees to pay to Landlord, without offset or deduction, rent for the demised premises at the rate of Six Hundred Sixty Four and 11/100 (\$664.11) per month in advance. The first of such monthly installment shall be due and payable on the first day of the month following the execution of the Amendment to Ground Lease, and a like installment shall be due and payable on or before the first day of each calendar month thereafter during the term hereof.

2. The Ground Lease is further amended by deleting the description of the demised premises and substituting therefor the description attached hereto and marked Exhibit "A-1", which description shall be considered hereafter as the legal description for the demised premises covered by such Ground Lease.

3. Except as expressly provided herein, all terms and provisions of the Ground Lease shall remain unchanged and in full force and effect.

4. This Amendment to Ground Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

EXECUTED as of the day and year first above written.

THE TOWN OF ADDISON, TEXAS

X By [Signature]
ADDISON AIRPORT OF TEXAS, INC.

By [Signature] PRES

[Signature]
WILLIAM R. WHITE

STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on 22nd
Nov., 1983, by [Signature] of The City
of Addison, Texas, a Texas municipal corporation, on behalf of
said corporation.



[Signature]
Notary Public in and for
Dallas County, Texas

STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on February
24, 1983, by [Signature] of Addison
Airport of Texas, Inc., a Texas corporation, on behalf of said
corporation.

Deborah L. James
Notary Public in and for
Dallas County, Texas

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on January 13
 , 1983, by William R. White.

Rita Bocage
Notary Public in and for
Dallas County, Texas

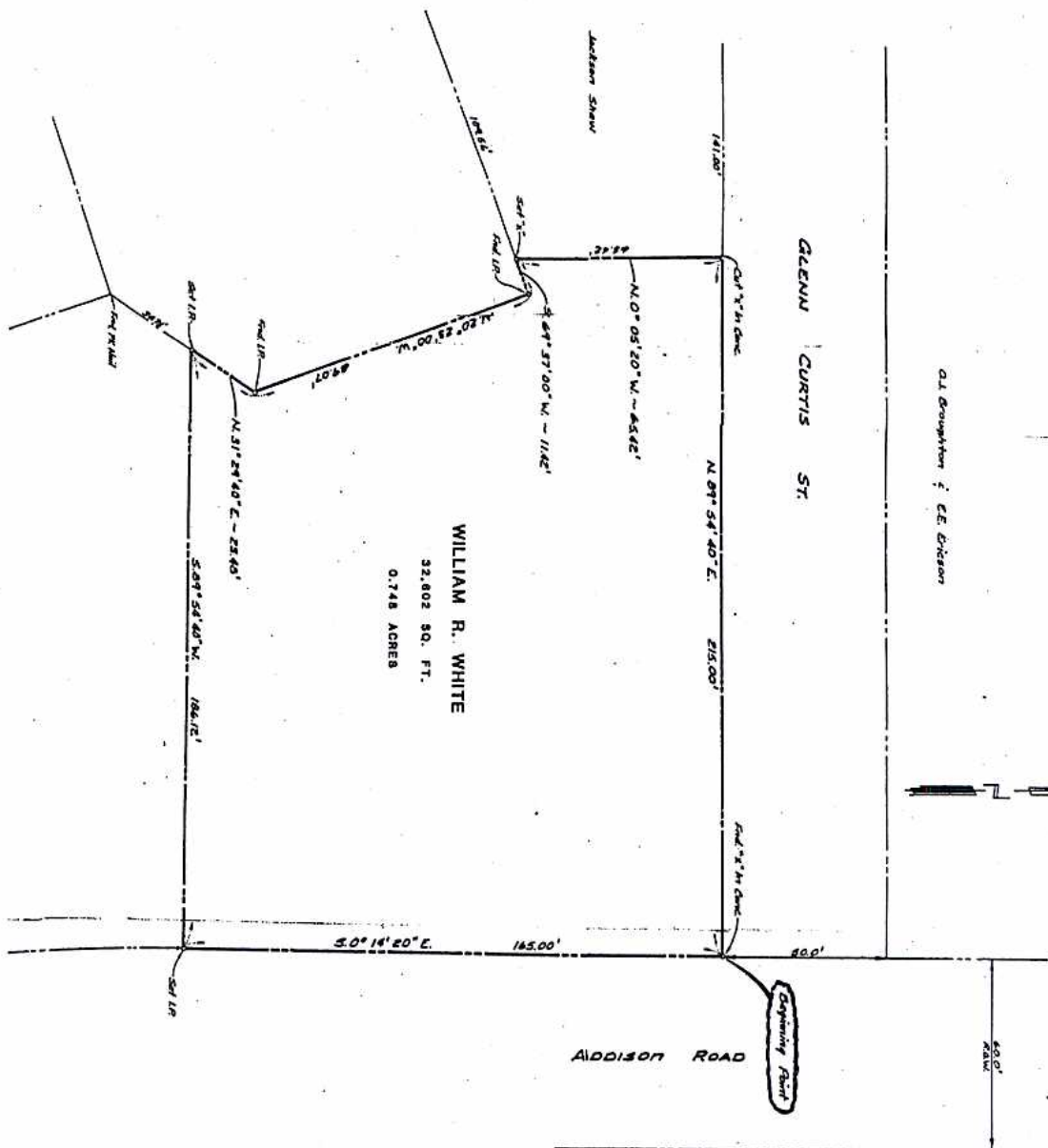
RITA BOCAGE
Notary Public, State of Texas
My Commission Expires June 11, 1986
Bonded by Equi-Asset Agency, Inc., Lufkin, Texas

A.O.C.
A.D.W.

Expanding Point

Addison Road

32,802 SQ. FT.
0.748 ACRES



Being a tract of land situated in the William Lomax Survey, Abstract 792, Dallas County, Texas, and located on Addison Municipal Airport, Addison, Texas, said tract being more fully described as follows:

COMMENCING at the southeast corner of a tract of land conveyed to O. J. Broughton and E. E. Ericson by deed as recorded in Volume 4350, Page 491, Dallas County Deed Records, said point also being on the west right-of-way line of Addison Road (a 60 foot street);

THENCE South 00° 14' 20" East, with said right-of-way a distance of 50.00 feet to a "x" in concrete found for the BEGINNING POINT of this description;

THENCE South 00° 14' 20" East, with said right-of-way a distance of 165.00 feet to an iron pin set for corner;

THENCE South 89° 54' 40" West, a distance of 186.12 feet to an iron pin set for corner;

THENCE North 31° 29' 40" East, a distance of 23.48 feet to an iron pin found for corner;

THENCE North 20° 23' 00" West, a distance of 89.07 feet to an iron pin found for corner;

THENCE South 69° 37' 00" West, a distance of 11.42 feet to a "x" in concrete set for corner;

THENCE North 00° 05' 20" West, a distance of 65.42 feet to a "x" in concrete set for corner;

THENCE North 89° 54' 40" East, a distance of 215.00 feet to the BEGINNING POINT of this description and containing 0.748 acres of land more or less.

Date January 3, 1945

William J. Wischmeyer
Rieve & Wischmeyer, Inc.

AGREEMENT

AGREEMENT made this 15th day of January, 1990, by
EAGLE LAND & CATTLE CO. ("Lessee") with TOWN OF
ADDISON, TEXAS ("Addison") and ADDISON AIRPORT OF TEXAS, INC.
("AATI").

W I T N E S S E I H :

WHEREAS, Addison and AATI will sponsor certain special
events such as automobile races and air shows ("Special Events")
to take place on dates to be determined in future years in
Addison, on a portion of the Addison Airport ("Airport");

WHEREAS, Lessee presently leases from Addison or AATI cer-
tain property on the Airport ("Property"); and

WHEREAS, the Special Events may affect the use and access
by Lessee to its property or the Airport.

NOW, THEREFORE, for and in consideration of Ten and no/100
Dollars (\$10.00), the mutual covenants, promises, and agreements
herein contained, and other good and valuable consideration, the
receipt and sufficiency of which is hereby acknowledged, it is
agreed as follows:

Lessee acknowledges that the Special Events may limit and
obstruct the access to the Property and the Airport on the dates
to be determined and for short periods of time on the days imme-
diately preceding and following such dates. Therefore, Lessee
does, for himself, co-tenants and joint owners of the Property,
hereby release, waive, discharge and covenant not to sue Addison,
AATI, their officers and employees from all liability to the
undersigned, co-tenant or joint tenants, its personal represen-
tatives, assigns and heirs for all loss or damage or any claim or
damage therefore on account of injury to person or property, real
or personal, loss of business or revenue, caused by or arising
out of the limiting or obstruction of access to his Property or
the Airport by the Special Event activities.

Lessee expressly agrees that this Agreement is intended to be as broad and inclusive and permitted by the laws of the State of Texas, and if any portion of the agreement is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

EXECUTED on the date aforementioned.

LESSEE;

EAGLE LAND & CATTLE CO.



By Gregg M. Pill

Title Executive Vice-President

ASSIGNMENT OF LEASE

THIS AGREEMENT is made this the 15th day of January, 1990, at Addison, Texas, between WILLIAM R. WHITE, hereinafter called "Assignor", and EAGLE LAND & CATTLE CO., hereinafter called "Assignee".

WHEREAS, a lease executed on September 4, 1980, between CITY OF ADDISON and ADDISON AIRPORT OF TEXAS, INC., as the Lessor, and the Assignor as Lessee, by the terms of which certain real property located on the Addison Airport was leased to the Assignor as Lessee upon the terms and conditions provided therein; and

WHEREAS, the Assignor now desires to assign the lease to Assignee, and the Assignee desires to accept the assignment thereof;

NOW, THEREFORE, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00), receipt of which is hereby acknowledged, and the agreement of the Assignee, hereinafter set forth, the Assignor hereby assigns and transfers to the Assignee, its successors and assigns, all of his right, title and interest in and to the lease hereinbefore described, a copy of which is attached hereto as Exhibit "A", and the Assignee hereby agrees to and does accept the assignment, and in addition expressly assumes and agrees to keep, perform and fulfill all the terms, covenants, conditions and obligations required to be kept, performed and fulfilled by the Assignor as the Lessee thereunder, including the making of all payments due to or payable on behalf of the Lessor under said lease when due and payable.

This agreement shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest, and assigns.

EXECUTED the day and year first above written.

ASSIGNOR:

WILLIAM R. WHITE

William R. White

ASSIGNEE:

EAGLE LAND & CATTLE CO.

Gregg M. White

CONSENT OF LESSOR

The undersigned is the Lessor in the lease described in
the foregoing Assignment and hereby consents to the assignment
of the lease to Assignee, waiving none of their rights
thereunder as to the ^{ASSIGNOR} Lessee or the Assignee.

LESSOR:

CITY OF ADDISON

By Shirley - Mayor

ADDISON AIRPORT OF TEXAS, INC.

By Sam Stuck - President

BEFORE ME, the undersigned authority, on this day personally appeared William R. White
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 11th day of January, 1990.

Joan E. Nieman
Notary Public
Dallas
County, Texas



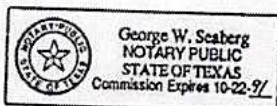
JOAN E. NIEMAN
Notary Public, State of Texas
My Commission Expires 1990

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared GREGG M. PILL
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 10 day of JANUARY, 1990.

George W. Seaberg
Notary Public
DALLAS
County, Texas



STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared D LYNIN SPRUILL
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purpose and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 14th day of JUNE, 1990.

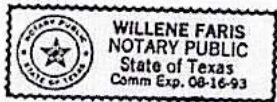


Gretchen S. Acevedo
Notary Public
Dallas
County, Texas

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Sam Stewart
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 18th day of May, 1990.



Willene Faris
Notary Public
Dallas
County, Texas

CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement ("Agreement") is by and among the former owners (the "Former Owners") and the current owners (the "Current Owners") of Eagle Land and Cattle Company, Inc. ("Corporation"), comprised of Donald D. Harrington and R. Clark McCormack, as former owners, and Hugh Lawrence, Christopher Tredemeyer, David Huser and Steven Daun, as current owners, and agreed to this 1st day of May, 2003, to acknowledge and confirm certain terms and provisions of that certain Ground Lease (the "Ground Lease"), by and between Corporation, as current tenant, and the Town of Addison, Texas, as current sole landlord, dated September 4, 1980, as amended to date (copy attached). The Current Owners have purchased the right, title and interest of the Former Owners in and to the Corporation, desire to affirm the Ground Lease, and desire to obtain the consent of the Town of Addison, Texas to the change in ownership of the Corporation.


The Current Owners, for themselves and on behalf of the Corporation, acknowledge and agree that:

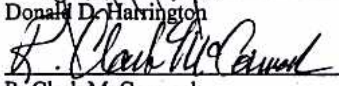
1. The Corporation, as Tenant under the Ground Lease, is expressly subject to and bound by all of the terms and provisions of the Ground Lease, including without limitation Paragraph 6 thereof pertaining to the use of the demised premises solely for the sale of aircraft and aircraft parts, aircraft maintenance and repair, aircraft storage, aircraft training, aircraft charters and aircraft rentals.
2. No term or provision of the Change in Control shall constitute a novation or otherwise be construed or be deemed to modify, alter, amend or change any term, provision or condition of the Ground Lease.
3. Any assignment or subletting of the Ground Lease by Tenant thereunder continues to be subject to the prior written consent of the Town of Addison, Texas.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Signed as of the date above set forth.


FORMER OWNERS:



Donald D. Harrington


R. Clark McCormack

CURRENT OWNERS:



Hugh Lawrence

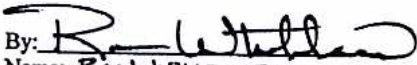
Christopher Tredemeyer

David Huser

Steven Daun

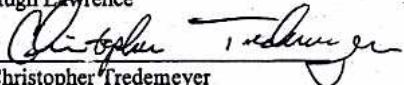
Subject to the Corporation's (as described above) compliance with the provisions contained herein, the Town of Addison, Texas, as Landlord under the above described Ground Lease, consents to the Change in Control of the Corporation as described above, solely for the purposes of the Ground Lease, this 30th day of May, 2003, waiving none of its rights under the Ground Lease, and this Consent shall not operate as a waiver of the prohibition against further assignment, transfer or subletting without Landlord's prior written consent.

Town of Addison, Texas

By: 
Name: RON WHITEHEAD
Title: CITY MANAGER

CURRENT OWNERS:

Hugh Lawrence



Christopher Tredemeyer

David Huser

Steven Daun

Subject to the Corporation's (as described above) compliance with the provisions contained herein, the Town of Addison, Texas, as Landlord under the above described Ground Lease, consents to the Change in Control of the Corporation as described above, solely for the purposes of the Ground Lease, this ____ day of May, 2003, waiving none of its rights under the Ground Lease, and this Consent shall not operate as a waiver of the prohibition against further assignment, transfer or subletting without Landlord's prior written consent.

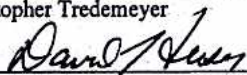
Town of Addison, Texas

By: _____
Name: _____
Title: _____

CURRENT OWNERS:

Hugh Lawrence

Christopher Tredemeyer



David Huser

Steven Daun

Subject to the Corporation's (as described above) compliance with the provisions contained herein, the Town of Addison, Texas, as Landlord under the above described Ground Lease, consents to the Change in Control of the Corporation as described above, solely for the purposes of the Ground Lease, this ____ day of May, 2003, waiving none of its rights under the Ground Lease, and this Consent shall not operate as a waiver of the prohibition against further assignment, transfer or subletting without Landlord's prior written consent.

Town of Addison, Texas

By: _____
Name: _____
Title: _____

CURRENT OWNERS:

Hugh Lawrence

Christopher Tredemeyer

David Huser

Steven Daugh

Subject to the Corporation's (as described above) compliance with the provisions contained herein, the Town of Addison, Texas, as Landlord under the above described Ground Lease, consents to the Change in Control of the Corporation as described above, solely for the purposes of the Ground Lease, this ____ day of May, 2003, waiving none of its rights under the Ground Lease, and this Consent shall not operate as a waiver of the prohibition against further assignment, transfer or subletting without Landlord's prior written consent.

Town of Addison, Texas

By: _____

Name: _____

Title: _____

Eagle, Land & Cattle Co. 16151 Addison Road Addison, TX 75001

May 28, 2003

Town of Addison, Texas P.O. Box 9010
Addison, Texas 75001

RE: Ground Lease ("Lease") dated September 4, 1980 and amended by that Amendment to the Ground Lease entered into on January 12th, 1983 (the said Lease as amended being referred to herein as the "Ground Lease"), by and among the City of Addison, Texas, a municipal corporation (the "City", the same being the Town of Addison, Texas), Addison Airport of Texas, Inc., a Texas corporation, as Landlord (the City now being the sole Landlord under the Lease, the "Base Lease" (as defined in the Ground Lease) having expired, and the City alone being referred to herein as the "Landlord") and William R. White ("White"), as tenant; the said Ground Lease then having been assigned to Eagle Land & Cattle Co. ("Eagle"), by that Assignment of Lease between White and Eagle entered into on January 15, 1990; whereby Landlord leases to Eagle certain real property (the "Real Property") located at the Addison Airport in Dallas County, Texas, as specifically described in the Ground Lease (and being generally located at 16151 Addison Rd. (Taxiway Reference Building #L..17), Addison, TX 75001), on the terms and conditions set forth in such Ground Lease.

Gentlemen:

Don Harrington and Clark McCormack ("Sellers") intend to make a loan to Eagle, Land & Cattle Co. ("Borrower") to finance the acquisition by Borrower from Sellers of the majority ownership of Eagle, including the tenant's leasehold right and interest in the Ground Lease, in exchange for Eagle's promissory note (the "Loan"), which Loan will be secured by a leasehold deed of trust lien solely against the leasehold interest of Eagle under the Ground Lease to be created pursuant to a leasehold deed of trust (the "Deed of Trust") to be executed by Eagle to Clark McCormack, as Trustee for the benefit of Sellers, which Deed of Trust is and shall be subordinate and inferior first to the Ground Lease and Landlord's lien (contractual and statutory) and other rights thereunder and all terms and conditions thereof, and second to a lien against the leasehold interest of Eagle as set forth in a deed of trust dated May 22, 2003, and executed by Borrower for the benefit of Gateway National Bank.

The Sellers have advised Borrower that, as a condition precedent to making the Loan, Sellers require the written acknowledgment of Landlord to the execution by Eagle of the above-described Deed of Trust and the written acknowledgment and consent of the Landlord to the statements set forth in this letter.

Therefore, by executing the enclosed copy of this letter and returning it to the undersigned, Landlord hereby specifically states as follows:

.Landlord takes notice of the above described Leasehold Deed of Trust and the subordinate and inferior lien provided for therein as described above to be imposed solely against Eagle's leasehold interest under the Ground Lease.

To the actual knowledge of Landlord there presently exists no default by Eagle under the Ground Lease.

The Ground Lease has not been modified, altered or amended except as described herein-

Landlord will give to Sellers, at the address of Sellers specified in this letter or at such other address as Sellers may hereafter designate in writing to Landlord, written notice of any default by Eagle under the Ground Lease simultaneously with the giving of such notice to Eagle, and Sellers shall have the right for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention that Landlord shall not exercise Landlord's right to terminate the Ground Lease without first giving Sellers the notice provided for herein and affording Sellers the right to cure such default as provided for herein.

For the purposes of this letter, any notice to Sellers may be delivered in person or shall be deemed to have been delivered, whether actually received or not, when deposited in United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Sellers at the following address:

16151 Addison Road Addison, TX 75001

.In the event Sellers succeed to the interest of Eagle in and to the Ground Lease by means of foreclosure under the Deed of Trust or of a transfer in lieu of such foreclosure, Landlord shall thereafter accept, recognize and treat Sellers as the tenant under the Ground Lease. Sellers may thereafter, with the written consent of the Landlord, assign its leasehold right, title, and interest in and to the Ground Lease. Very truly yours,

Very truly yours,

Don Harrington

Clark McCormack
Clark McCormack

Acknowledged the ____ day of May, 2003.

TOWN OF ADDISON, TEXAS

By: R. Whitehead
Name: Ron Whitehead
Title: City Mgr

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.d:atewayNationalBank "-" ~

u. May 30, 2003

Town of Addison, rl~exas P.O. Box 9010
Addison, Texas 75001

RE: Ground Lease ("Lease") dated September 4, 1980 and antended by that Amendment to the Ground Lease entered into on January 12th, 1983 (the said Lease as antended being referred to herein as the "Ground Lease"), by and antong the City of Addison, Texas, a municipal corporation (the "City", the sante being the Town of Addison, Texas), Addison Airport of Texas, Inc., a Texas corporation, as Landlord (the City now being the sole Landlord under the Lease, the "Base Lease" (as defined in the Ground Lease) having expired, and the City alone being referred to herein as the "Landlord") and Williant R. White ("White"), as tenant; the said Ground Lease then having been assigned to Eagle Land & Cattle Co. ("Eagle"), by that Assignment of Lease between White and Eagle entered into on January 15, 1990; whereby Landlord leases to Eagle certain real property (the "Real Property") located at the Addison Airport in Dallas County, Texas, as specifically described in the Ground Lease (and being generally located at 16151 Addison Rd. (Taxiway Reference Building #L-17), Addison, TX 75001), on the terms and conditions set forth in such Ground Lease.

Gentlemen:

Gateway National Bank, a national banking association (the "Bank"), intends to make a loan to Eagle to finance the acquisition by Hugh Lawrence, Steven Daun, Howard Huser, and Christopher Tredemeyer from Sellers of the majority ownership of Eagle, including the tenant's right and interest in the Ground Lease, in exchange for Eagle's promissory note (the "Loan"), which Loan will be secured by a leasehold deed of trust lien solely against the leasehold interest of Eagle under the Ground Lease to be created pursuant to a leasehold deed of trust (the "Deed of Trust") to be executed by Eagle to John C. Shackelford, Esq., as Trustee for the benefit of Bank, which Deed of Trust is and shall be subordinate and inferior to the Ground Lease and Landlord's lien (contractual and statutory) and other rights thereunder and all terms and conditions thereof.

The Bank has advised Eagle that, as a condition precedent to making the Loan, Bank requires the written acknowledgment of Landlord to the execution by Eagle of the above-described Deed of Trust and the written acknowledgment and consent of the Landlord to the statements set forth in this letter. Therefore, by executing the enclosed copy of this letter and returning it to the undersigned, Landlord hereby specifically states as follows:

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...; MAIN PHONE: 972/288-BANK
24-HOUR INFORMATION (STAR 2000) 972-286-2000 www.gatewaybank;com
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Town of Addison, Texas May 30, 2003 Page 2

U I. Landlord takes notice of the above described Leasehold Deed of Trust and the 11; subordinate and inferior lien provided for therein as described above to be imposed solely against Eagle's leasehold interest under the Ground Lease.

2. To the actual knowledge of Landlord there presently exists no default by Eagle under the Ground Lease.
3. The Ground Lease has not been modified, altered or amended except as described herein.
4. Landlord will give to Bank, at the address of Bank specified in this letter or at such other address as Bank may hereafter designate in writing to Landlord, prompt written notice of any default by Eagle under the Ground Lease simultaneously with the giving of such notice to Eagle, and Bank shall have the right for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention that Landlord shall not exercise Landlord's right to terminate the Ground Lease without first giving Bank the notice provided for herein and affording Bank the right to cure such default as provided for herein.
5. For the purposes of this letter, any notice to Bank may be delivered in person or shall be deemed to have been delivered, whether actually received or not, when deposited in United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Bank at the following address:

Wm. Gene Payne Gateway National Bank 3636 Shepherd Lane Batch Springs, Texas 75180

6. In the event Bank or a third party (provided such third party is approved by Landlord in accordance with the terms of the Ground Lease for approval of an assignee) succeeds to the interest of Eagle in and to the Ground Lease by means of foreclosure under the Deed of Trust or of a transfer in lieu of such foreclosure due to the failure or inability of Eagle to pay the Loan secured by the Deed of Trust, Landlord shall thereafter accept, recognize and treat Bank or such approved third party , as the case may be, as the tenant under the Ground Lease. If Bank succeeds to the interest of Eagle as described in this paragraph 6, Bank may thereafter, with the written consent of the Landlord, which consent shall not be unreasonably withheld or delayed, assign its leasehold right, title, and interest in and to the Ground Lease. For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to withhold its

MAIN PHONE: 972/288-BANK
24-HOUR INFORMATION (STAR 2000) 972-286.2000 www.gatewaybank.com

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-GatewayNationalBank ',,...1 ""'-

Town of Addison, Texas May 30, 2003 Page 3

U consent when anyone or more of the following apply:

- (a) the proposed assignee is of a character or of a reputation or is engaged in a business which is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;
- (b) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the tenant under the Ground Lease at the time when the consent is requested;
- (c) the proposed assignee's intended use of the demised premises as defined in the Ground Lease is inconsistent with the Ground Lease;
- (d) the proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Addison Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);
- (e) if at any time consent is requested or at any time prior to the granting of consent, tenant is in default under the Ground Lease or would be in default under the Ground Lease but for the pendency of a grace or cure period; or
- (t) the proposed assignee does not intend to occupy the entire demised premises as described in the Ground Lease and conduct its business therefrom for a substantial portion of the then remaining term of the Ground Lease.

For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to delay its consent for a period of 45 days after the receipt by Landlord of all information requested by Landlord regarding or in connection with the proposed assignment and the proposed assignee.

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-GateWayNationalBank

Town of Addison, Texas May 30, 2003 Page 4

U Very truly yours,

Gateway National Bank,
a national banking association

By:~ Name: C 1"2 L /t/H t,y Title: J//Li. fi.£~IL>fP'...

Acknowledged the day of May 2003. TOWN OF ADDISON, TEXAS

By:--2 -(\ rl-u-- -) N~e: ~;::: \~ h~~~f Title: e. L '1'''''''' ~~~. G.\Shacklaw\2761\221\Gateway Bank Estoppel (Eagle).DOC

MAIN PHONE: 972/288-BANK
24-HOUR INFORMATION (STAR 2000) 972-286-2000 www.gatewaybank.com